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S. Hrg. 99-547

TO SETTLE CERTAIN CLAIMS AFFECTING THE PYRAMID LAKE PAIUTE INDIAN TRIBE OF NEVADA, AND FOR OTHER PURPOSES

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S. 1558

TO SETTLE CERTAIN CLAIMS AFFECTING THE PYRAMID LAKE PAIUTE INDIAN TRIBE OF NEVADA, AND FOR OTHER PURPOSES

OCTOBER 2, 1985
WASHINGTON, DC

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TO SETTLE CERTAIN CLAIMS AFFECTING THE PYRAMID LAKE PAIUTE INDIAN TRIBE OF NEVADA, AND FOR OTHER PURPOSES

WEDNESDAY, OCTOBER 2, 1985

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to recess, at 10:20 a.m., in room 485, Russell Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senator Andrews, Senator Gorton, and Senator Burdick.

Also present: Peter S. Taylor, majority staff director; and Virginia Boylan and Pat Zell, staff attorneys.

Senator ANDREWS. The committee will come to order. My apologies for being tardy. It is one of those things that happen. Our hearing this morning is on S. 1558, a long and a complicated, but I am sure very just, bill which has been introduced by our colleagues Senator Laxalt and Senator Hecht in order to enable the Pyramid Lake Paiute Indian Tribe and local non-Indian interest groups to settle problems which have existed since the turn of the century.

The problems exist among the various groups which live by and benefit from three rivers which have their source high in the Sierra Nevada Mountains in California and end their flow in basins to the east of Nevada. The Truckee River, the Carson River, and the Walker River sustain life and farming and commerce for the residents of the area which includes the Paiute Indians, the towns of Reno and Sparks, and the Newlands Irrigation District.

Two of the fish in Pyramid Lake are endangered species. The Lahontan cutthroat trout has already had a close call, having previously disappeared from Pyramid Lake, but was saved because it also lived in an adjoining lake and has been reintroduced into Pyramid Lake.

The cui-ui, a remarkable sucker fish from ancient time exists only in Pyramid Lake. It has a traditional and a profound meaning to the Paiute Indians, and it will be given a better chance for survival, we understand, under the proposals in this bill.

The bill has two parts: title I and title II. Title I would encourage and enable the parties with different interests to settle their differences. Indeed, title I is more of an invitation to effect a settlement than it is a settlement. It sets the stage for further and final negotiation by the parties.

Title II is an interstate compact between the States of California and Nevada, approved when President Reagan was Governor of

California and Senator Laxalt was Governor of Nevada. The Congress had authorized the compact in 1955. It has not been ratified by the Congress.

[The text of S. 1558 follows:]

99TH CONGRESS
1ST SESSION

S. 1558

To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 1 (legislative day, JULY 16), 1985

Mr. LAXALT (for himself and Mr. HECHT) introduced the following bill; which was read twice and referred jointly to the Select Committee on Indian Affairs, and the Committees on Energy and Natural Resources and the Judiciary. Provided that if the Select Committee on Indian Affairs reports the bill, the Committees on Energy and Natural Resources and the Judiciary have fifteen calendar days in which to report the measure or be discharged

---

A BILL

To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985".

TITLE I—TRUCKEE RIVER SETTLEMENT

SEC. 101. For the purposes of this title, the Congress finds that—

(1) Pyramid Lake, a desert lake into which the Truckee River flows and which has no outflow, is an important natural resource which is situated within the Pyramid Lake Indian Reservation;

(2) the fish resources of Pyramid Lake include the Lahontan cutthroat trout and the cui-ui, which are listed in 50 CFR 17.11(h) and which have been designated by the Secretary of the Interior as threatened and endangered species, respectively;

(3) rights to the waters and flows of the Truckee River are the subject of existing and prospective lawsuits involving numerous parties in Nevada, including among others the Pyramid Lake Paiute Tribe, major agricultural interests, water districts, and the cities of Reno and Sparks and Washoe County, Nevada;

(4) although some of these lawsuits have resulted in decisions by the Ninth Circuit Court of Appeals and the United States Supreme Court, such decisions have not yet resolved all controversies among the parties; and, unless pending litigation is settled, there will continue to be proceedings in the courts;

(5) these lawsuits not only will prove expensive and time consuming for all participants but also could have a profoundly adverse impact upon all the parties and the economies of Nevada;

(6) the parties to the lawsuits have diligently attempted to settle these claims and have stated to the relevant committees of the Senate and the House of Representatives their interest in settling the controversies and litigation surrounding the various claims affecting the Truckee River, Pyramid Lake and its fish resources, and Stampede Reservoir;

(7) it is the long-term interest of the United States, the State of Nevada and its political subdivisions, the State of California, the Pyramid Lake Paiute Tribe, and other communities of Nevada that the United States and the State of Nevada provide a stimulus for and assist in the implementation of a permanent settlement of such litigation; and

(8) to the extent a settlement is facilitated by this title, settlement will—

(A) permit expensive and lengthy litigation to be resolved by mutual agreement of the parties and in a manner which accommodates to the extent possible the needs of all parties;

(B) enhance the Lahontan cutthroat trout and the cui-ui and their habitat;

(C) assist the economic development of the Pyramid Lake Paiute Tribe; and

(D) provide needed municipal and industrial water for use in the cities of Reno and Sparks and Washoe County, Nevada.

DEFINITIONS

SEC. 102. As used in this title—

(1) the term "Tribe" means the Pyramid Lake Paiute Tribe which is organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476);

(2) the term "Secretary" means the Secretary of the Interior;

(3) the term "Newlands Project" means the project authorized pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 395) for reclamation and irrigation of land in the Carson and Truckee River basins;

(4) the term "Washoe Project" means the Reclamation Project authorized pursuant to the Act of August 1, 1956 (43 U.S.C. 614);

(5) the term "Lower Truckee River" means that portion of the Truckee River below Derby Dam;

(6) the term "Pyramid Lake fish resources" means the Lahontan cutthroat trout and the cui-ui;

(7) the terms "enhancement" and "enhance" mean measures and the taking of measures, including natural and hatchery propagation and habitat improve-

ment, necessary and appropriate to improve the biological status of the Pyramid Lake fish resources;

(8) the term "replacement cost" means the then current municipal and industrial water rate charged to the Carson-Truckee Water Conservancy District by the Secretary pursuant to section 105(b);

(9) the term "water year" means the period commencing on October 1 of any year and ending on September 30 the following years; and

(10) the term "by period" means the period of time that the Truckee River system storage is at reduced levels. The indication of such condition shall be when Lake Tahoe is at or below an elevation of 6225.25 feet, Lake Tahoe DATUM, or such other elevation as agreed to by the Secretary, the Tribe, the Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

EFFECT ON EXISTING RIGHTS AND AUTHORITIES

SEC. 103. (a) Nothing in this title shall be construed as—

(1) modifying or terminating any court decree, except as provided by the provisions in subsections (b) and (c) of section 105 and section 111, including those decrees entered in the following cases:

(A) *United States* v. *Alpine Land & Reservoir Co.*, Civ. No. D–183 BRT (D. Nev.);

(B) *United States* v. *Orr Water Ditch Co.*, Equity No. A–3 (D. Nev.); and

(C) *United States* v. *Truckee River General Electric Company*, Civ. No. 14861 in the United States District Court for the Northern District of California (now Civ. No. S–643–LKK in the Eastern District in California), as modified by the Truckee River Agreement incorporated in and made a part of the final decree in, *United States* v. *Orr Water Ditch Co.*, Equity No. A–3, in the United States District Court for the District of Nevada;

(2) diminishing or impairing any property right existing on the effective date of this title; and

(3) providing any Congressional directive binding on the State Engineer of Nevada.

(b) Nothing in this title shall be construed as prohibiting the modification or termination of any court decree upon agreement of the parties to such court decree.

WATER DELIVERIES

SEC. 104. The Secretary shall, acting through the Bureau of Reclamation, deliver annually such quantities of water to the Pyramid Lake Indian Reservation as may be necessary for the maintenance and enhancement of the Pyramid Lake fish resources, wildlife conservation, outdoor recreation, environmental quality, economic development, and other purposes. The Secretary shall be deemed to have satisfied fully this obligation only if—

(1) for the first ten-year period commencing October 1, 1978, and for each succeeding ten-year period commencing one year after the beginning of the preceding ten-year period, the average elevation of Pyramid Lake measured at the end of each water year is not less than 3,794 feet above mean sea level; and

(2) at the end of the first two-year period beginning October 1, 1988, and each succeeding two-year period the elevation of Pyramid Lake is not less than 3,786 feet above mean sea level.

WATER MANAGEMENT

SEC. 105. (a) The Secretary shall take actions as are necessary to meet his obligations under this title. In carrying out such obligations, and notwithstanding any other provision of law, the Secretary may—

(1) acquire by purchase, but not by eminent domain, private lands or interests having water rights;

(2) enter into water exchange agreements with any individual or legal entity;

(3) enter into agreements with Truckee-Carson Irrigation District for rehabilitation and betterment of the Newlands Project, including the T canal pilot lining project, which shall include a component for the improvement of the Stillwater Wildlife Management Area

and the Carson Lake Pasture to the extent such improvement is necessary to mitigate fully the effects of such rehabilitation and betterment;

(4) enter into such other agreements as may be necessary;

(5) conduct weather modification programs and other programs to augment the flows of the Truckee and Carson Rivers;

(6) allocate costs of the Washoe Project to development of fish and wildlife resources on a nonreimbursable basis notwithstanding the limitation on expenditures imposed by section 4 of the Washoe Project Act (43 U.S.C. 614c) or any other provision of law; and

(7) after consultation with the Administrator of the Western Area Power Administration, withdraw from commercial sale all or any portion of Washoe Project power for any person or entity who becomes a party to the agreements referred to in section 107(a)(10) if, after such consultation, the Secretary determines that such energy is necessary to offset losses associated with the Truckee River hydroelectric powerplants of such person or entity.

(b) Notwithstanding any other provision of law and subject to agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, the Secretary shall execute a perpetual contract for the sale of water from Stampede Reservoir in the quantity set forth in sections 105(c) and 105(d) for municipal and industrial use in the cities of Reno and Sparks and Washoe County, Nevada and not for the purpose of dilution of sewage effluent.

(c) Upon execution of the contract and for ten years thereafter, Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District. To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 50,000 acre feet, or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(d)(1) After the ten years provided in subsection (c) and based upon a projected demand buildup period to be defined by the parties (Secretary, Tribe, Sierra Pacific Power Company), the Carson-Truckee Water Conservancy District shall have the right to withdraw from Stampede Reservoir storage for municipal and industrial purposes, an average of 5,000 acre feet per year or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(2) The district shall be provided a dry period municipal and industrial supply based on the average annual withdrawal from Stampede Reservoir storage of 15,000 acre feet, or such other amount as agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(3) To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 120,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(e) Notwithstanding any other provision of law, the Secretary shall execute a perpetual contract for the sale of such water in addition to the water referred to in subsections (b) through (d) of section 105 to the Carson-Truckee Water Conservancy District from Stampede Reservoir to the extent such water is not required for the Pyramid Lake fish resources.

(f) The allocation of project costs made to municipal and industrial water supply under paragraphs (1) through (4) of subsection (b) of section 105 shall be repayable to the United States in 50 years from the date the conditions of section 107 of this title have been met, under the provisions of the Federal reclamation laws, with right of prepayment, and provided further, that repayment of costs allocated to municipal and industrial water supply shall include interest on the unamortized balance of such allocations at a rate equal to the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long term securities outstanding on the date of enactment of the Washoe Project Act (43 U.S.C. 614) and adjusted to the nearest one-eighth of 1 per centum.

(g) Subject to the agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, Sierra Pacific Power Company shall have the right to accumulate privately owned stored water in Stampede Reservoir to the extent storage is available. Such waters shall be allocated their proportionate share of evaporation loss and in the event water is required to be spilled from Stampede Reservoir such privately owned stored water shall be spilled prior to any Federal water stored in said reservoir.

(h) If any of the lands or interests therein acquired under this title have appurtenant Newlands Project water rights or if any of the agreements entered into under this title provide for the transfer of Newlands Project water rights to non-Newlands Project lands or uses, the Secretary shall each year pay the Truckee-Carson Irrigation District from the funds referred to in section 108(b)(2) or from other funds all operation, maintenance, and other charges that would have been assessed if the acquisition or transfer had not occurred.

(i) The Secretary shall make payments to the State of Nevada and its political subdivisions each year from the funds referred to in section 108(b)(2) or from other funds in lieu of real property taxes or other assessments that would have otherwise been assessed with respect to lands and interests in lands acquired pursuant to this title.

(j) Notwithstanding any other provisions of law, the Secretary is authorized to file an application with the State Engineer of Nevada for a permit to change the point of diversion, place, means, manner, or purpose of use of any water which the Secretary may acquire under this title.

(k) The authority of the Secretary provided in this section shall not be construed to preclude the existence of that authority under other provisions of law.

FISH PROPAGATION

SEC. 106. (a) In addition to the obligations referred to in section 104, the Secretary shall—

(1) within three years after the date upon which the conditions of section 107 of this title have been met, formulate and commence a fish enhancement program to—

(A) provide such measures as are necessary to bring the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as "endangered" or "threatened" pursuant to the Endangered Species Act (16 U.S.C. 1531, et seq.); and

(B) restore to the maximum extent practicable natural spawning of the Lahontan cutthroat trout and cui-ui in the Lower Truckee River; and

(2) continue to operate and maintain—

(A) the Lahontan National Fish Hatchery or any appropriate replacement fish hatchery facilities;

(B) fish hatchery facilities and improvements thereto situated on the Pyramid Lake Indian Reservation, the construction of which was or is federally supported; and

(C) the fishway and fish facilities at Marble Bluff Dam.

(b) The fish enhancement program provided in subsection (a)(1) shall consist of one or more of the following programs and shall be designed to enhance the Pyramid Lake fish resources in the most cost-effective manner:

(1) a program designed to facilitate and maintain physical restoration of the Lower Truckee River;

(2) modification and replacement of the fishway and fish facilities at Marble Bluff Dam;

(3) construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Reservation;

(4) within the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Tribe and the Secretary; and

(5) outside the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Secretary, the Tribe, the State of Nevada, and other affected parties.

(c) Nothing in this title shall be a limitation on spending authority under the Act of November 2, 1921 (25 U.S.C. 13) or any other Act of Congress.

(d) For the purposes of section 106(a)(2)(B), a hatchery is federally supported if moneys appropriated by Congress were or are used to pay, in whole or in part, for its construction.

(e) The Secretary shall, upon agreement with the Tribe, undertake biological studies to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

EFFECTIVE DATES

SEC. 107. (a) The provisions of sections 104, 105, 106, 110, and 111 of this title and title II of this Act shall not take effect until—

(1) Sierra Pacific Power Company and Washoe County, Nevada, have executed an agreement with the United States and the Tribe providing for the withdrawal, modification, or other appropriate disposition of application Nos. 47047, 47121, 47209, and 47264 pending before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

(2) the State Engineer of Nevada approves, subject to the provisions of the agreement referred to in subsection (a)(1), the application of the Tribe, Nos. 48061, and 48494, for permits to appropriate waters of the Truckee River;

(3) the State of Nevada agrees to contribute the amount referred to in section 108(b)(1);

(4) *Pyramid Lake Paiute Tribe* v. *California*, Civ. S-81-378-RAR, United States District Court, Eastern District of California, is dismissed with prejudice;

(5) *United States* v. *Truckee-Carson Irrigation District*, 2987-RCB, United States District Court,

District of Nevada, including those matters asserted in the Tribe's proposed amended complaint, is dismissed with prejudice;

(6) the Tribe's appeal in *United States* v. *Orr Water Ditch Co.*, No. 85-1880, Ninth Circuit Court of Appeals, is dismissed with prejudice;

(7) the Tribe's and the Secretary's appeals from the State Engineer's ruling in *United States* v. *Orr Water Ditch Co.*, Equity A 3-WEC, United States District Court, District of Nevada, and *United States* v. *Alpine Land & Reservoir Co.*, D-183-BRT, in the United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands are dismissed with prejudice;

(8) *Pyramid Lake Paiute Tribe of Indians* v. *Clark* No. R-85-197-BRT. United States District Court for the District of Nevada, is dismissed with prejudice;

(9) *Truckee-Carson Irrigation District* v. *United States*, No. 512-7 (Ct. Cl.), is dismissed with prejudice;

(10) the operating criteria has been agreed upon, adopted and approved as provided in section 111; and

(11) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, ratified such agreement by a court having competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under section 106(a)(1) and under sections 105 (b), (c), (d), and (e); and

(12) all pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy Regulation Commission, have been withdrawn.

(b)(1) Subject to the provisions of paragraph (2) and except as provided in subsections (g) and (h) of section 108 and section 109(e), all the conditions of section 107(a) shall be accomplished within one year from the date of the enactment of this title or this Act shall terminate and shall be of no further force or effect.

(2) Upon the agreement of the Secretary and the Director of the Nevada Department of Conservation and Natural Resources the time limit provided in paragraph (1) may be extended for a period not to exceed six months.

SETTLEMENT FUND

SEC. 108. (a) There is hereby established in the Treasury of the United States a fund, to be known as the "Pyramid Lake Settlement Fund", to be used to carry out the purposes provided in this title.

(b) The settlement fund shall consist of—

(1) $8,000,000 to be contributed by the State of Nevada;

(2) amounts to be appropriated to the settlement fund; and

(3) interest accruing to the settlement fund pursuant to subsection (e).

(c) There is hereby authorized to be appropriated to the settlement fund the sum of $21,000,000. Funds appropriated pursuant to this section shall remain available until expended.

(d) The source of any moneys expended from the settlement fund shall be deemed to be one-half from the amount contributed to the settlement fund by the State of Nevada and one-half from funds appropriated pursuant to subsection (c) until an aggregate of $16,000,000 shall have been expended. All moneys expended in excess of $16,000,000 shall be deemed to be Federal funds.

(e) Such portion of the settlement fund as the Secretary determines is not required to meet current withdrawals shall be invested by the Secretary of the Treasury at the request of the Secretary in public debt securities of the United States with maturities suitable to the needs of the settlement fund, as determined by the yields on outstanding marketable obligations of the United States of comparable maturities.

(f) In the event the Secretary fails to obligate the sum of $16,000,000 to implement the fish enhancement program required by section 106(a)(1) within five years after the date upon which the conditions of section 107 have been met, or within such additional period as may be agreed upon by the Secretary and the Tribe, the amount representing the difference between $16,000,000 and the amount obligated shall be forfeited to the Tribe together with the interest thereon and credited to the Tribal Trust Fund established by section 109 of this title.

(g) None of the moneys referred to in this section may be expended until the conditions of section 107 have been met. In the event these conditions are not met, the moneys referred to in subsection 108(b)(1) together with any interest earned thereon shall be returned to the State of Nevada and any moneys referred to in subsection (c) together with any interest thereon shall be deposited in the Treasury of the United States as miscellaneous receipts.

TRIBAL TRUST FUND

SEC. 109. (a) There is hereby authorized to be appropriated the sum of $10,000,000 to be deposited in the Treasury of the United States in a fund to be known as the "Pyramid Lake Paiute Tribe Trust Fund". Such sum shall be held in trust for the Tribe, invested in interest-bearing deposits and securities, including securities of the United States, and expended as specified in this section.

(b) There shall be added to the tribal trust fund any amounts credited to the tribal trust fund under section 108(f). Until such time as the Lahontan cutthroat trout and the cui-ui shall shall no longer be listed as having been designated as either a threatened species or an endangered species, any moneys credited to the tribal trust fund pursuant to section 108(f) and any income earned thereon shall be expended only for the purpose of enhancing the Pyramid Lake fish resources in accordance with a plan approved by the Secretary.

(c) Except as provided in subsection (b) with respect to the amounts credited to the tribal trust fund under section 108(f), principal and income from the tribal trust fund may be used for capital expenditures relating to the economic development of the reservation. Income from the tribal trust fund may be used for operating expenses associated with economic development of the Tribe or tribal administrative purposes.

(d) The amount referred to in section 109(a) shall bear interest from the date of the enactment of this Act.

(e) None of the moneys referred to in this section may be expended unless and until the conditions of section 107 have been met. In the event such conditions are not met, the moneys referred to in this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

DAMAGES

SEC. 110. (a) Subject to the conditions provided in subsection (b), the Secretary shall, in the event the Secretary fails to meet the obligations in section 104, pay damages to the governing body of the Tribe in an amount equal to the replacement cost of such quantities of water as are necessary to meet those obligations or such lesser amount as may be agreed to by the Tribe.

(b)(1) The United States shall have no right to recover any portion of such damages from any person or entity, and the provisions of this section shall constitute the exclusive remedy of the Tribe for the failure to maintain the Lake levels as provided in section 104.

(2) The damages provided for in this section shall not exceed in any one year the sum of $5,000,000 for damages for the failure to meet the requirements of section 104(a) and the sum of $2,000,000 for damages for the failure to meet the requirements of section 104(b) or such lesser amount as may be agreed to by the governing body of the Tribe.

THE NEWLANDS RECLAMATION PROJECT

SEC. 111. (a) Notwithstanding any other provision of law, all repayment obligations for irrigation construction costs owing to the United States or one of its agencies by the Truckee-Carson Irrigation District shall be canceled by the Secretary and the Secretary shall at the request of the District issue a certificate acknowledging that the lands in the

District are free of the acreage and ownership and full cost pricing provisions of Federal Reclamation law provided that Truckee-Carson Irrigation District shall have the right to collect all unpaid construction costs. Such certificate shall be in a form suitable for entry in the land records of Churchill County and Lyon County, Nevada.

(b)(1) Truckee-Carson Irrigation District shall be responsible for the operation and control of the Newlands Project lands, works and rights subject to such reasonable rules and regulations as to repairs and maintenance of project facilities as the Secretary may adopt.

(2) Project operating criteria shall be agreed upon and adopted by the Secretary and Truckee-Carson Irrigation District, and approved by the Tribe and the State of Nevada. Project operating criteria shall be consistent with the provisions of the final decrees that have been entered in *United States of America* v. *Orr Water Ditch Co.*, and *United States* v. *Alpine Land & Reservoir Co.*, Nos. Equity A–3 and D–183 BRT in the United States District Court for the District of Nevada, and Nevada law.

COMPLIANCE WITH BUDGET ACT

SEC. 112. No authority under this title to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriation Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.

OTHER STATUTES AFFECTED

SEC. 113. (a) All actions taken by the Secretary pursuant to sections 104, 105, 106, 107, and 111 of this title shall be exempt from the requirements of the National Environmental Policy Act (42 U.S.C. 4321, et, seq.).

(b)(1) Subject to the provisions of paragraph (2), actions under sections 104, 105, 106, 107, and 111 shall be recognized and deemed to be in full compliance with the Endangered Species Act (165 U.S.C. 1531, et, seq.) with respect to the Pyramid Lake fish resources and may be taken without regard to the requirements of the Act.

(2) Nothing in this subsection shall be deemed to prevent the Secretary from, in his discretion, seeking further appropriations for the purpose of constructing or modifying facilities or structures to enhance the Pyramid Lake fish resources.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

SEC. 114. The obligations of the Secretary to implement the fish enhancement program on the Pyramid Lake Reservation pursuant to section 106 shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

TITLE II—CONSENT AND APPROVAL OF CONGRESS TO THE CALIFORNIA-NEVADA INTERSTATE COMPACT

CONGRESSIONAL CONSENT

SEC. 201. The consent and approval of Congress is given to the Congressional Consent California-Nevada Interstate Compact between the States of California and Nevada. Such compact reads as follows:

"CALIFORNIA-NEVADA INTERSTATE COMPACT

"ARTICLE I. PURPOSES

"Consistent with the provisions of the authorization acts of the State of California and the State of Nevada and the United States, the major purposes of this compact are to provide for the equitable apportionment of water between the two States; to promote interstate comity and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation, and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins.

"ARTICLE II. DEFINITIONS

"A. The terms 'California' and 'Nevada' shall mean respectively the State of California and the State of Nevada.

"B. The term 'commission' shall mean the administrative agency created by Article IV of this compact.

"C. The term 'Lake Tahoe Basin' shall mean the drainage area naturally tributary to Lake Tahoe including said lake or to the Truckee River upstream from the Truckee River intersection with the western boundary of Section 12, Township 15 North, Range 16 East, Mount Diablo Base and Meridian.

"D. The term 'Truckee River Basin' shall mean the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake including such lake, but excluding the Lake Tahoe Basin.

"E. The term 'Carson River Basin' shall mean the area which naturally drains into the Carson River and its tributaries and to the Carson River Sink, but excluding the Humboldt River drainage area.

"F. The term 'Walker River Basin' shall mean the area which naturally drains into the Walker River and/or Walker Lake upstream from the intersection of the river and/or lake in Mineral County, Nevada, with the northern township line of Tier 10 North, Mount Diablo Base Line.

"G. Except as otherwise expressly provided in this compact the term 'existing', 'present', and 'presently' shall mean as of 1964.

"H. The term 'effective date of the compact' shall be the date on which the legislation provided for in Article XXII (1) and (2) shall become law.

"I. 'Measured' means the determination of the relevant amount of water in cubic feet per second or gallons per minute or acre-feet by the use of a current meter, rated weir, rated flume, pipeline water meter, computation from contour maps, or any other method which results in a reasonably accurate determination based on sound engineering practices.

"ARTICLE III. SOVEREIGN RELATIONSHIP

"A. Each state shall have jurisdiction to determine pursuant to its own laws, the rights to the use of waters allocated to it herein; provided, however, that the right to use such water shall be limited to such quantities of water as shall reasonably be required for the beneficial use to be served and shall not extend to the waste or unreasonable use of water. Such provision shall not be construed to affect the water rights laws of either state with respect to any waters, other than the waters allocated to the state hereunder. Each state will recognize and accept applications for such permits, licenses or other permissions as are required by the law of the state where the application is filed to enable the other state to utilize water allocated to such other state. This provision shall neither require nor prohibit the United States of America from complying with provisions of state law relating to the appropriation of water allocated to the states by this compact.

"B. Each state shall cooperate with the other in securing to each the right to fully utilize the rights and privileges granted and waters allocated to each hereunder.

"C. The use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the state in which the use is made.

"ARTICLE IV. THE CALIFORNIA-NEVADA COMPACT COMMISSION

"A. Creation and Composition

"1. There is hereby created an interstate compact commission to be designated as the California-Nevada Compact Commission herein referred to as the commission.

"2. The commission shall consist of five members from each state and one member as representative of the United States chosen by the President of the United States who is hereby requested to appoint such a representative. The United States member shall be ex officio chairman of the commission without vote and shall not be a domiciliary of or reside in either state.

"(a) The California members of the commission shall consist of the Director of the Department of Water Resources of the State of California, and four (4) members appointed by the Governor of California, all of whom shall be residents of the State of California. One of the four members so appointed shall be a resident of the Lake Tahoe Basin, one shall be a resident of the Truckee River Basin, one shall be a resident of the Walker River Basin and one shall be a resident of the Carson River Basin.

"(b) The Nevada members of the commission shall consist of the State Engineer of the State of Nevada (who additionally shall represent all Nevada areas not otherwise represented as herein provided), and four (4) members appointed by the Governor of Nevada, each of whom shall be a resident of the State of Nevada and represent a specific area therein as below defined, provided that the Governor shall not appoint any person a member of such commission if he determines that such person has a conflicting interest in California. One of the four members so appointed shall be a resident real property owner within and represent the Reno-Sparks metropolitan area (including adjacent agricultural area) and be fully qualified by knowledge and experience in connection with the water requirements and supply for such area; the other three members so appointed shall be representative of the common interest and goals of all water users of the area and each shall have broad practical experience in water management, and one shall be a resident real property owner within and represent the Walker River Basin in Nevada, another shall be a resident real property owner within and represent the Carson River Basin in Nevada upstream from Lahontan Reservoir, and the third shall be a resident real property owner within and represent the area within the Truckee-Carson Irrigation District in Nevada.

"3. The term of office of the four members of the commission appointed by each Governor shall be four (4) years. The Governor of each state, upon appointment of the first members of the commission, shall designate one member of the commission to serve for a period of one year, one member to serve for a period of two years, one member to serve for a period of three years, and one member to serve for a period of four years. Thereafter, members shall be appointed for the regular term of four years as the terms expire.

"4. Interim vacancy, for whatever cause, in the office of any member of the commission shall be filled for the unexpired term in the same manner as hereinabove provided for regular appointment.

"5. The appointed members of the California-Nevada Compact Commission shall be designated within ninety (90) days after the effective date of the compact. Within thirty (30) days after such members have been appointed and the federal representative designated, the commission shall meet and organize.

"B. Finances

"1. The salaries and the personal expenses of each member of the commission shall be paid by the government he represents. All other expenses which are incurred by the commission incident to the administration of this compact and which are not paid by the United States or by other funds received by the commission shall be borne equally by the two states.

"2. The commission shall adopt a budget covering the commission's estimate of its expenses for each of the following two fiscal years; provided, that whenever the Legislatures of both states appropriate funds on an annual basis the commission shall submit its budget on such annual basis. The commission shall submit said budget to the Governors of the two states for joint review and approval and to the President of the United States at the earliest date prescribed by the two states for submission of proposed budgets. Each state shall appropriate one-half of the funds necessary to meet said budget requirements, which appropriations shall be made available to the commission as of July 1 of each fiscal year for such fiscal year's operations. All unexpended and unencumbered funds from such appropriations shall be returned by the commission in equal proportions to the states to the credit of the state fund from which said appropriations was made. All receipts and disbursements of funds handled by the commission shall be subject to a joint audit by the states and the report of said audit shall be included, and become a part of the annual report of the commission.

"3. The commission shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the Constitution of said government. The commission shall not incur any obligations prior to the availability of funds adequate to meet the same.

"4. The commission shall make and transmit to the Legislature and Governor of each state and to the President of the United States an annual report covering the finances and activities of the commission and embodying such plans, recommendations and findings as may have been adopted by the commission.

"C. Meetings and Voting

"1. A quorum for any meeting of the commission shall consist of six members of the commission, provided that at least three members are present from each state.

"2. All meetings of the commission for the consideration of and action on any matters coming before the commission, except matters involving the management of internal affairs of the commission and its staff, or involving litigation in which the commission is a party, shall be open to the public. Matters coming within the exception of this paragraph may be considered and acted upon by the commission in executive session under such rules and regulations as the commission may see fit to establish.

"3. Each state shall have but one vote and every decision, authorization, determination, order or other action shall require the concurring votes of both states, provided that no state shall vote on any action without the concurring vote of not less than three members of the commission from such state.

"D. General Powers

"The commission shall have power to:

"1. Adopt, amend and revoke bylaws, rules and regulations and prescribe procedures for administration of the provisions of this compact.

"2. Establish such offices as it deems necessary, and acquire and hold property either by purchase, lease or otherwise as may be necessary for the performance of its functions under this compact.

"3. Employ engineering, legal, clerical and other aid as in its judgment may be necessary for the performance of its functions. Such employees shall be paid by and be responsible to the commission and shall not be considered to be employees of either state. The commission may establish workmen's compensation benefits directly or by insurance. The commission is authorized to contribute to the cost of health and accident insurance for its employees to the same extent as either state contributes to the cost of such insurance for its employees.

"4. Perform all functions required of it by this compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state, federal or local agency or other entity or person.

"5. Make such findings as are pertinent to this compact including but not limited to findings as to the quantities of water being used in either state, the amount of water available for use pursuant to the allocations made herein, and each state's share of the waters allocated.

"6. Install and maintain measuring devices of a type or types approved by the commission in any stream, lake, reservoir, ditch, pumping station or other diversion works on the Truckee, Carson or Walker Rivers or on Lake Tahoe, or on waters tributary thereto, or to require water users at their expense to install and maintain measuring devices, as the commission may determine necessary or proper to carry out the purposes or provisions of this compact. The execution and enforcement of such requirements concerning such measuring devices as shall be enacted by the commission shall be accomplished by the commission directly, or by such federal, state, local or other official or person as the commission may delegate, or by any other agency responsible to or representing a federal court.

"7. Accept gifts of money or real property or anything of value.

"8. Appoint a hearing examiner or examiners who may be members of the commission to conduct hearings and to make recommendations to the commission on any matter requiring a hearing and decision by the commission.

"9. Obtain a right of access to all properties in the Lake Tahoe, Truckee River, Carson River and Walker River Basins whenever necessary for the purpose of administration of this compact. The commission may obtain a court order to enforce this right of access.

"10. Take such action as it deems appropriate for the enforcement of the provisions of this compact.

"11. Administer oaths or affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena which may be served anywhere within the territorial limits of the United States; said power to administer oaths and affirmations and to compel the attendance of witnesses and the production of documents by the use of subpoena may also be exercised by any hearing examiner appointed as provided in subsection 8 of this Section D.

"12. Contact with the appropriate agency of either state, including the retirement system, to provide retirement and other benefits to commission employees.

"E. Whenever the public health or welfare is endangered, the commission may declare the existence of an emergency and, in such event, shall designate the location, nature, cause, area, extent and duration thereof. In the event of an emergency so declared, the commission may, with respect to all matters covered by this compact, do all things necessary, proper or convenient independently or in cooperation with any other agency, person, or entity, to initiate, carry on, and complete any and all remedial measures required to meet said emergency including the adoption and enforcement of any regulations and restrictions necessary for such purpose.

"ARTICLE V. LAKE TAHOE BASIN

"A. The right of the United States or its agent to store waters in Lake Tahoe between elevations 6,223.0 and 6,229.1 feet (Lake Tahoe datum) and to release said stored waters for beneficial uses downstream from Lake Tahoe Basin is hereby ratified and confirmed subject to the rights granted in Section D of this article.

"B. It is agreed by the states subject to the consent of the head of the federal agency having jurisdiction thereof, that an overflow weir of approximately 140 feet in length with a crest elevation of 6,223.0 feet, Lake Tahoe datum, upstream from the Lake Tahoe outlet gates shall be constructed and installed with necessary channel improvements within four years from the effective date of this compact provided that should the commission decide that it is in the best interest of each of the two states, it may extend such period for such additional period or periods as it may deem reasonable. The cost of this installation shall be borne by the States of California and Nevada in equal amounts. As used herein, Lake Tahoe datum shall be measured with respect to the top surface of the hexagonal brass bolt seven-eighths inch in diameter, projecting one inch from the vertical face of the southerly concrete abutment wall of the present existing Lake Tahoe Dam, at approximately 3.2 feet below the top of the wall and approximately in line with the upstream ends of the cutwaters of the concrete piers between the sluiceways of the dam. This surface of the brass bolt is presumed for the purposes of the compact to have an elevation 6,230.0 feet Lake Tahoe datum, notwithstanding that it was determined by the U.S. Geological Survey on November 15, 1960, to be at an elevation of 6,228.86 feet above sea level datum of 1929.

"C. The storage rights in Lake Tahoe shall be operated alone or in conjuntion with other reservoirs so as to minimize the period and duration of high and low water elevations in Lake Tahoe, provided that exchanges of water or releases between Lake Tahoe and other reservoirs shall not measurably impair the intended purpose of such reservoirs.

"D. Upon construction of the overflow weir provided for in Section B of this article, the total annual gross diversions for use within the Lake Tahoe Basin from all natural sources including ground water and under all water rights in said basin shall not exceed 34,000 acre-feet annually, of which 23,000 acre-feet annually is allocated to the State of California for use within said basin, and 11,000 acre-feet annually is allocated to the State of Nevada for use within said basin. After use of the water allocated herein, neither export of the water from the Lake Tahoe Basin nor the reuse thereof prior to its return to the lake is prohibited. This allocation is conditioned upon the construction of the overflow weir; however, it is recognized that there may well be a period of time between the effective date of the compact and the construction of the overflow weir; during that period of time both states shall be permitted to use waters within the Lake Tahoe Basin subject to the same conditions, both as to place of use and amounts of use, as are provided in this Article V.

"E. In addition to the other allocations made by this compact, transbasin diversions from the Lake Tahoe Basin in both states existing as of December 31, 1959, may be continued, to the extent that such diversions are recognized as vested rights under the laws of the state where each such diversion is made.

"The diversion of a maximum of 3,000 acre-feet per annum from Marlette Lake for use in Nevada is hereby recognized as an existing transbasin diversion within the meaning of this Section E.

"F. Pumping from Lake Tahoe Basin for the benefit of downstream users within the Truckee River Basin shall be permitted only in the event of a drouth emergency as declared by the commission to the extent required for domestic, municipal, and sanitary purposes, and when it is determined by the commission that all other water available for such uses from all sources is being so utilized. In the event of such declaration of emergency, use of this water for such purposes shall have priority over use of water for any other purpose downstream from Lake Tahoe Basin. Pumping shall be done under the control and supervision of the commission and water pumped shall not be charged to the allocation of water to the Lake Tahoe Basin made herein.

"ARTICLE VI. TRUCKEE RIVER BASIN—

"The following allocations of water of the Truckee River and its tributaries, including Lake Tahoe releases, are hereby made in the following order of relative priority as between the states:

"A. There is allocated to Nevada water for use on the Pyramid Lake Indian Reservation in amounts as provided in the 1944 Truckee River Decree (Final Decree in United States vs. Orr Ditch Company, et al., United States District Court for the District of Nevada, Equity No. A3). By appropriate court order, the United States, for and in behalf of the Pyramid Lake Indians shall have the right to change points of diversion, place, means, manner, or purpose of use of the water so allocated so far as such change may be made without injury to the allocations to either state.

"B. There is allocated to California:

"1. The right to divert within the Truckee River Basin in California 10,000 acre-feet of water per calendar year which may be stored in reservoirs at times when the flow in the channel of the Truckee River at the United States Geological Survey Gauging Station at or near the California-Nevada state line exceeds 500 cubic feet per second; provided that such diversions shall not in the aggregate exceed 2,500 acre-feet in any calendar month and the amount of such storage in any one reservoir, except Donner Lake, shall not exceed 500 acre-feet of active storage capacity.

"2. The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of United States vs. Sierra Valley Water Company, United States District Court for the Northern District of California, Civil No. 5597, as limited by said judgment.

"3. Six thousand acre-feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet, subject to the execution of a contract or contracts therefor with the United States of America. California may divert all or any portion of said 6,000 acre-feet of conservation yield from Stampede Reservoir directly or by exchanges from any source on the Truckee River or its tributaries or from Lake Tahoe. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

"4. If and when the water allocated to California in subparagraphs 1 and 3 of this section and in Article V is being used, or such use appears imminent, the commission shall permit California to develop additional yields of water for use in California, either directly or by exchange subject to the following limitations:

"(a) All existing beneficial uses of water for domestic, municipal, industrial, and agricultural purposes in Nevada as determined by Nevada law as of that time together with the yield of Stampede Reservoir in excess of 6,000 acre-feet shall be recognized and not impaired by the development of such additional yield.

"(b) Additional yields developed for use in California shall be limited to an amount not to exceed an aggregate of 10,000 acre-feet annually, and such development shall be for domestic, municipal, and industrial uses solely. California shall be allowed to deplete this allocation; provided, that in ascertaining the amount of depletion, credit for return flow shall be limited to the amounts of water which can be measured as a contribution to the Truckee River system.

"(c) The right of the commission to permit Nevada to share in such additional yield upon participation by Nevada in bearing a proportionate cost of developing such additional yield.

"C. The right to store in Prosser Creek Reservoir a maximum of 30,000 acre-feet of water annually with the priority as set forth in California State Water Rights permit 11666 and to release water therefrom as set forth in said permit and any license which may be issued thereunder is hereby recognized and confirmed.

"D. There is allocated to Nevada all water in excess of the allocations made in Sections B and C of this article.

"ARTICLE VII. CARSON RIVER BASIN

"The following allocations of water of the Carson River and tributaries are hereby made in the following order of priority as between states:

"A. There is allocated to the State of California:

"1. The right to divert from the natural flow of the West Fork Carson River and its tributaries for existing nonirrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 5,600 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 168 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 185 c.f.s. measured at the points of diversion.

"Provided, however, diversions for use downstream from the western boundary of Section 34, Township 11 North, Range 19 East, Mount Diablo Base and Meridian, shall be subject to the following limitations:

"(a) Whenever, after the first Monday in May or any day in that week or alternate weeks thereafter of any year the flow of the West Fork of the Carson River at said western boundary shall have fallen below 175 cubic feet per second, then, until October 31 next, water users in California who divert from the West Fork of the Carson River downstream from said western boundary shall rotate all or any portion of the natural flow of the West Fork of the Carson River necessary to satisfy the demand of Nevada lands with water users in Nevada every other week beginning with the week following that in which water is used in Nevada, and during each rotation period said California users shall be entitled to divert the natural flow of the West Fork of the Carson River during their rotation weeks.

"(b) Rotation between water users in California and Nevada on the West Fork of the Carson River may be terminated in whole or in part upon approval of the commission for such termination, upon provision being made so that sufficient water is available by storage or exchange to assure that the water users in Nevada will receive at the same time the flow of water which would have been available to the Nevada water users under rotation.

"(c) Stock water, domestic water, and water for fire protection purposes may be diverted downstream from said western boundary from the natural flow of the West Fork of the Carson River at all times by owners of irrigation water rights in California whose lands are contiguous to the West Fork of the Carson River; provided, however, that such diversion shall be limited to the amounts actually required to deliver water for such purposes, and any excess over the amount so diverted shall be returned to the West Fork of the Carson River whenever practicable. Water diverted under this provision shall not be converted to any other use. The commission or its designee shall rule on any challenge relative to the necessity and amount of water required for such purposes.

"2. The right to divert from the natural flow of the East Fork Carson River and its tributaries for existing nonirrigation uses, and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 3,280 acres, an aggregate flow of water equal to a 30-day average of 3 c.f.s. per 100 acres or 115 c.f.s. for the area as a whole; provided that the 3 c.f.s. per 100-acre limitation shall not prevent greater rates of diversion for those areas which have an established greater rate of use; provided further, however, that the maximum aggregate diversion shall not exceed 115 c.f.s. measured at the points of diversion.

"3. There is allocated to the State of California the right to store 2,000 acre-feet of water per annum within Alpine County for supplemental use on presently irrigated lands within said county adverse to Lahontan Reservoir but subject to all other existing uses in Nevada. Water stored pursuant to this section remaining at the end of the year shall be deemed to have been stored in the succeeding year.

"B. There is allocated to the State of Nevada;

"1. The right to divert water from the natural flow of the Carson River and its tributaries during the period commencing March 15 and ending October 31 of each year at the rate of 3 c.f.s. per 100 acres for use on presently irrigated lands in the area above Lahontan Reservoir determined to be approximately 41,320 acres. The rate of 3 c.f.s. per 100 acres is based on a 30-day average for the area as a whole and shall not prevent greater rates of diversion for those areas that have an established greater use; provided that the aggregate diversion measured at the points of diversion shall not exceed 700 c.f.s. on the East Fork of the Carson River, 300 c.f.s. on the West Fork of the Carson River, and 220 c.f.s. on the Main Carson River below the confluence of the East and West Forks.

"The combining and exchanging of the use of water between ditches and among users shall be permitted at all times and shall be required whenever necessary in order to obtain reasonable economy in the use of the water of the river or other streams, or in order to give to each ditch or user a more advantageous irrigation head.

"2. Subject to allocations made in subsection B.1 and Section C of this article, the right to divert water from the

Carson River for irrigation use either by direct diversion or by storage in Lahontan Reservoir or other existing reservoirs for use on the Newlands Project.

"C. There is allocated to each state the right to store water in existing reservoirs upstream from Lahontan Reservoir to the extent of existing capacity with the appropriate priority with respect to natural flow rights upstream from Lahontan Reservoir under applicable state law, and use such stored waters on the lands in each state to which the storage is appurtenant.

"D. Additional yields shall be available for development under the currently authorized Washoe Project from water available in excess of existing beneficial uses recognized by Nevada law, or under other new projects upon a determination by the commission that there is water available on the Carson River and its tributaries in excess of that required to satisfy existing beneficial uses in Nevada as determined by Nevada law as of the time of authorization of construction of such new projects. Such additional yields shall be allocated between the states with equal priority, 20 percent of which shall be allocated to California and 80 percent to Nevada.

"Each state shall have the right to participate in any development project by bearing a proportionate cost of such development. In the event that joint developments are found to be not feasible or desirable, each state may develop separately its proportionate share of the remaining water.

"E. Except as provided by Article X of this compact, the waters of the Carson River shall not be used in areas outside the Carson River Basin.

"ARTICLE VIII. WALKER RIVER BASIN

"A. Allocations to Present Rights and Uses

"1. Except as the rights of the Walker River Irrigation District may be limited by subsections 2 and 3 below, the provisions of the decree in the case of United States v. Walker River Irrigation District, et al., United States District Court for the District of Nevada Equity No. C–125, filed April 15, 1936, as amended by the Order of the Honorable A. F. St. Sure, dated April 24, 1940, hereafter called Decree C–125 are hereby recognized and confirmed.

"2. The rights of the Walker River Irrigation District to store water of the West Walker River in Topaz Reservoir with a storage capacity of 59,000 acre-feet, under Part VIII of Decree C–125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

"(a) The maximum quantity of water which can be diverted annually to storage is 85,000 acre-feet. No more than 85,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district annually. The 85,000 acre-feet amount so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in Decree C-125 acquired by said district prior to 1964. For the purpose of this provision 'annually' means the period from November 1 through October 31 of the following year.

"(b) The maximum rate of diversion to such reservoir under such rights is 1,000 c.f.s.

"(c) For the purpose of determining the availability of water to satisfy rights junior to the Topaz Reservoir storage rights of the Walker River Irrigation District, or for division between the states as unused water, water which has been stored, or is available for storage in and can be physically diverted to such reservoir under such reservoir rights but is released or is allowed to pass through the reservoir and is not rediverted to use in Nevada, shall be deemed to have been held in storage; provided, that until a new major storage project is constructed on the West Walker River, the foregoing shall not apply to the extent that said district with the concurrence of the watermaster determines, prior to the release or passing through of such water from Topaz Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Topaz Reservoir as a means of protecting lands in Nevada against flood damage later in the year.

"3. The right of the Walker River Irrigation District to store water of the East Walker River in Bridgeport Reservoir with a storage capacity of 42,000 acre-feet, under Part VIII of Decree C-125 and under any other basis of right, and to use such water, are hereby recognized and confirmed, subject to the following:

"(a) The maximum quantity of water which can be diverted to storage in any year is 57,000 acre-feet. No more than 57,000 acre-feet of water less reservoir evaporation can be rediverted for use within the district in any year. The 57,000 acre-feet amounts so allowed to be diverted to storage and rediverted to use include water used under direct diversion rights in said decree acquired by said district prior to 1964 except for water used under such rights prior to 1964 on lands owned by said district in Bridgeport Valley. For the purpose of this provision 'year' means the period from November 1 of one calendar year to October 31 of the following calendar year.

"(b) Water of the East Walker River and its tributaries may, adversely to the Bridgeport Reservoir storage rights hereinabove recognized and confirmed, be stored upstream from said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights; provided, that when the Walker River system is put on priority under Decree C-125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

"4. (a) There is allocated to each state respectively the amount of existing diversions and uses of water of the Walker River Basin diverted upstream from Weber Reservoir and not specifically covered in Decree C–125, provided, that this allocation shall not include water distributed under the historical administration of Decree C–125 in excess of the rights set forth in Decree C–125 to lands having rights thereunder. In making this allocation, it is recognized that the amounts of water allocated and the respective priorities are not presently known with certainty. The commission shall as soon as practicable after its effectuation provide for an investigation, either with its own staff or by other agencies or persons, to ascertain with certainty the amounts of water and priorities of such uses. As between the respective states, the priorities shall be determined as follows: In cases of use not under state-recognized rights, the priorities shall be the date of initiation of use; in cases of use under state-recognized rights, the priorities shall be as provided under the law of the state where the diversion is made. Upon approval by the commission, the results of the investigation shall be binding as to the allocation to each state hereunder.

"(b) In addition to rights recognized in subsection A.1 of this article there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet per year for storage in Weber Reservoir and later rediversion to use and in addition 9,450 acre-feet per year to be diverted from natural flow. Both allocations shall have a priority of 1933. The season for diversion of water storage shall be from November 1 to October 31 of the following year. The season for diversion of water directly for use shall be from March 1 to October 31 and at a maximum rate of 60 cubic feet per second. For the purpose of determining the availability of water to satisfy rights junior to this allocation or for division between the states as unused water, water which has been stored, or which can be physically stored or diverted to use under this allocation but is released or is allowed to pass through Weber Reservoir and is not rediverted to use on the Walker River Indian Reservation, shall be deemed to have been held in storage or used: *Provided,* That the foregoing shall not apply to the extent that the appropriate representative of said reservation with the concurrence of the watermaster determines prior to the release or passing through of such water from Weber Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Weber Reservoir as a means of protecting lands in Nevada against flood damage later in the year: *Provided further,* That the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water of suitable quality for irrigation on said reservation as determined by the commission.

"Water of the Walker River and its tributaries may, adversely to the Weber Reservoir storage rights hereinabove recognized and confirmed, be stored upstream for said reservoir in any year, for later use after the spring flood of the year in which the water was so stored, under rights junior to said reservoir rights: *Provided,* That when the Walker River system is put on priority under Decree C-125 after the annual spring flood, or upon demand made prior to the spring flood for water necessary to satisfy early season demand, the watermaster shall make an accounting and water shall be released from said upstream storage in such amounts as determined by the watermaster to be necessary to satisfy said reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

"5. In addition to rights recognized in subsections A.1 and A.4(a) above, there is allocated to California water of the West Walker River as follows:

"(a) When all direct diversion rights under Decree C-125 are being satisfied and simultaneously water of the West Walker River is being diverted to storage pursuant to the Topaz Reservoir storage rights recognized and confirmed in subsection 2 of this Section A, but there is not flow in excess of that required to fully satisfy Topaz Reservoir storage rights, diversions in Antelope Valley in excess of the amounts to which Antelope Valley lands are entitled under Decree C-125 shall be permitted by the watermaster for such periods and in such amounts as, in the sound professional judgment of the watermaster, will not cause, on an overall irrigation season basis, any discernible net reduction in the amount of water available to satisfy Topaz Reservoir storage rights.

"(b) Such excess diversions may be used only on Antelope Valley lands entitled to water under Decree C-125 which can be served from the ditch systems existing as of the effective date of this compact.

"(c) The allocation in this subsection 5 shall terminate after construction of a new major storage project on the West Walker River upstream from Antelope Valley.

"B. Allocation of Unused Water

"1. The term 'unused water' includes all waters of the Walker River and its tributaries in excess of the amounts allocated, or required for satisfaction of rights and uses recognized and confirmed, as provided under Section A of this Article VIII, except that there shall be excluded therefrom natural flow which is not physically available above the head of Mason Valley. There is allocated to the State of California 35 percent of such unused water, and there is allocated to the State of Nevada 65 percent of such unused water. The allocation to each state provided herein in this subsection B.1 shall be equal in priority.

"(a) The reregulation by storage of waters allocated for storage shall not be considered as the development of 'unused water'.

"2. Neither state shall be precluded from constructing works for the control, use and development of the water allocated pursuant to subsection B.1 of this article for optimum use of water.

"3. While separate development may be undertaken by either state for surface storage of unused water of the West Walker River so allocated, the State Engineer of the State of Nevada and the Department of Water Resources of the State of California shall cooperate in a joint review of all potential developments of unused water of the West Walker River so allocated in subsection B.1 of this Article VIII and shall prepare and present a report of the benefits to be obtained, and other relevant data from each such development to the commission or if the commission has not yet become operative, to the joint commission which negotiated this compact, at a public hearing or hearings held at times and places within the Walker River Basin set by the commission or said joint commission.

"(a) Should a separate surface storage project or projects be constructed in Nevada to develop Nevada's share of the unused water of the West Walker River, California may thereafter store and use said unused water allocated to Nevada adverse to such Nevada storage projects: *Provided*, That, without charge to Nevada, California makes available for consumptive use in Nevada, water in the same amounts, at the same times, and in the same places as would have been available for use in Nevada from such Nevada storage projects had California not so stored and used said unused water allocated to Nevada: *And provided further*, That Nevada shall not be deprived of water required for: (1) maintenance of a minimum reservoir level for the preservation of fish life and (2) nonconsumptive uses which are found by the commission to be in the public interest of the Walker River Basin as a whole.

"(b) From time to time after construction of each surface storage project upstream from Topaz Reservoir, for development of the unused water allocated herein, the commission shall determine the amounts of water which may be diverted and used in each state pursuant to its allocation as the result of the construction and operation of such project. In making such determination the commission shall compute any increase of yield of previously constructed reservoirs which may result from operation of such project constructed to develop unused water and shall include such increase in the amounts of water which may be diverted and used in each of the two states pursuant to its allocation of unused water.

"4. Return flow to the Walker River or its tributaries from any source shall be deemed to be natural flow.

"5. Unused water shall be used only:

"(a) Within the Walker River Basin;

"(b) Within the portion of Artesia Lake Basin south of the northern township line of Tier 12 North and west of a line one mile east of the eastern range line of Range 23 East, Mount Diablo Base Line and Meridian;

"(c) Within the portion of Mason Valley and Adrian Valley south of the northern township line of Tier 15 North, Mount Diablo Base Line;

"(d) Within the area tributary of Topaz Lake; or

"(e) Any combination of the above areas.

"C. Watermaster.

"1. A single watermaster shall have the responsibility and power to administer: (a) all rights and uses of water of the Walker River Basin recognized in Section A of this Article VIII, including rights under Decree C–125, (b) the allocation between the states provided for in this compact of water of the Walker River Basin in excess of that necessary to satisfy such rights and uses, and (c) all rights acquired to use water so allocated.

"2. The watermaster shall be nominated by the commission as soon as practicable after this compact goes into effect, but his appointment shall not become effective until approved and confirmed by the Federal District Court for the District of Nevada, it being the intent of this compact that only a person satisfactory to both the commission and said court be the watermaster under this compact and under Decree C–125. At any time either the commission or said court may terminate the appointment of the person serving as watermaster by adopting an appropriate resolution or order, and notifying the other and the watermaster thereof. When a vacancy occurs by such action or by the death or resignation of the person serving as watermaster, a successor shall be selected by the same procedures for the original appointment.

"3. Until appointment of the watermaster becomes effective by approval and confirmation of said court either as to the original selection of the watermaster or subsequent selections to fill a vacancy, a person designated by the commission shall have interim responsibility and power to administer the allocation between the states referred to in subsection (1)(b) above and all rights and uses other than the rights under Decree C–125, and the rights and uses under Decree C–125 shall be administered on an interim basis as may be provided by said court.

"4. Actions and decisions of the watermaster as to the administration of the rights under Decree C–125 shall be subject to review and modification by said court. Actions and decisions of the watermaster as to the administration of the allocation between the states referred to in subsection 1(b) above and of all rights and uses other than rights under Decree C–125 shall be subject to review and modification by the commission.

"5. Said court is requested to appoint a six-member advisory board composed of one person each representing: (1) the East Walker River Basin in California, (2) the West Walker River Basin in California, (3) the East Walker River Basin in Nevada, (4) the West Walker River Basin in Nevada, (5) the Main Walker River Basin in Nevada, and (6) the Walker River Indian Reservation. The watermaster shall prepare an annual budget of proposed expenditures for personnel, equipment, supplies, and other purposes deemed by him to be necessary to carry out his functions. In the formulation of said budget the watermaster shall consult with said advisory board. In the event that said advisory board is not in agreement with the budget proposed by the watermaster, it shall so advise said court. Said budget shall require approval of both the commission and said court to become effective.

"6. The expenditures attributable to administration of the rights under Decree C–125 shall be apportioned and collected in accordance with orders of said court. The expenditures attributable to administration of all other rights and uses of the water of the Walker River Basin under this compact shall be equitably apportioned among, and collected from, the users thereof by the watermaster under rules and regulations of the commission, and the commission shall have the power to enforce collection thereof by any reasonable means, including court action in any state or federal court of appropriate jurisdiction. The expenditures attributable to administering the allocation between the states referred to in subsection 1(b) above shall be borne by the commission as part of the expense under Article IV, subsection B.1 of this compact.

"ARTICLE IX. GROUND WATER AND SPRINGS

"A. Development and Use of Ground Water

"1. Both states shall have the right to develop and use ground water within their respective boundaries; provided that development and use of ground water in one state shall not reduce the amount of water which the other state would have received under the allocation herein if ground water were not developed and used.

"2. In the development and use of ground water pursuant to this article, wells or other methods of collecting underground water shall be constructed in a manner which will assure that water will not be drawn directly from allocated surface water. In the absence of proof to the contrary made to the commission, wells drilled within 500 feet from any perennial streams which are not sealed from the surface to a depth of at least 50 feet shall be deemed prima facie to draw directly from allocated surface water.

"B. Each state shall have the right to use water from springs; provided that the use of water from springs in one state shall not reduce the amount of water which the other state would have received under the allocations herein if water from springs were not used.

"C. Effect on Allocations

"1. The commission shall have authority to take such action as it deems appropriate, so that the allocations of water made by this compact to either state shall not be adversely affected by ground water withdrawals or use of water from springs in the other state.

"2. If either state claims that the development and use of ground water or water from springs in the other state reduces the amount of water which said state would have received under its allocation if such ground water or water from springs were not developed and used, it may file a protest with the commission in accordance with the rules of the commission. The commission is empowered to receive evidence on any protest and make its ruling thereon.

"ARTICLE X. INTERBASIN TRANSFERS OF USE

"Either state may use directly, by exchange, or otherwise its allocated waters of the Truckee River-in the Lake Tahoe Basin or the Carson River Basin, or its allocated waters of the Carson River in the Lake Tahoe Basin or the Truckee River Basin. The commission shall have authority to take such action as it deems appropriate so that the allocations of water made by this compact to either state shall not be adversely affected by such use in the other state.

"Nothing herein shall preclude the use of Lake Tahoe as a physical facility to accomplish the use of Truckee River waters in the Carson River watershed or Carson River waters in the Truckee River watershed, but in no event shall the use of Lake Tahoe as such a physical facility be inconsistent with any provision of Article V of the compact.

"ARTICLE XI. SUPPRESSION OF EVAPORATION

"A. Either state is entitled, but not obligated to participate in any project for the conservation of water through the suppression of evaporation. The yield of any such project shall be allocated to each state by the commission in such proportion as shall be determined by the commission, taking into consideration such factors as the commission deems pertinent. Such allocation of yield to each state shall be in addition to the waters allocated to each state by other provisions of this compact.

"B. Subject to the power of the commission to allocate the increased yield resulting from suppression of evaporation as set forth above, no existing property right shall be adversely affected except by agreement with the owner, or as may be otherwise permitted by state law. Nothing herein shall diminish or supersede any law of either state regarding water quality, including but not limited to conditions affecting fish and wildlife.

"ARTICLE XII. COORDINATION OF RESERVOIRS

"A. The commission shall have the authority to prepare plans for the coordination of reservoirs and the method of implementation of any such plans prepared, and to approve the same and to review and revise such approved plans from time to time as the commission may deem appropriate. Prior to the preparation of any such plan and implementation or review or revision thereof, the owners of all reservoirs to be affected thereby shall be given the opportunity of participating in such preparation, review, or revision.

"B. Prior to the approval thereof, the commission shall provide for public hearings concerning such a plan, review, or revision upon such notice as the commission deems appropriate.

"C. Any owner of a reservoir shall have the right to refuse to participate in any such plan, or method of implementation, or review or revision thereof, and in such event such reservoir shall be excluded therefrom, and any plan or implementation or review or revision concerning other reservoirs as may be approved shall not adversely affect the use of the reservoir or the right to the use of water therefrom, which has been excluded.

"D. Owners of reservoirs may develop plans for coordination thereof, but shall give written notice to the commission at least 60 days prior to their implementation.

"ARTICLE XIII. FISH, WILDLIFE, AND RECREATION

"The use of waters for preservation, protection, and enhancement of fish, wildlife, and recreation is hereby recognized as an inseparable part of the public interest in the use of the waters of Lake Tahoe, Truckee, Carson and Walker River Basins in both states, and is, therefore, beneficial.

"ARTICLE XIV. NONCONSUMPTIVE USE

"Each state may use water for nonconsumptive purposes, including but not limited to flood control, recreation, fishery and wildlife maintenance and enhancement, and hydroelectric power generation, provided that such uses result in no discernible reduction in the water allocated to the other state.

"ARTICLE XV. DIVERSION AND EXCHANGE OF YIELD FROM FUTURE RESERVOIRS

"Upon the construction of a surface storage project or projects to store unused water herein allocated, users who become entitled to the yield therefrom may, at any point where water is physically available, divert water to use subject to approval of the commission and conditioned upon providing water in exchange for such diverted water as directed by the commission, so that other users, including owners of reservoir storage or owners of interest in waters stored, receive their entitlement of water in time, place, and quality the same as if the diversion and exchange had not been made.

"ARTICLE XVI. CHANGE OF POINT OF DIVERSION, MANNER, PURPOSE, OR PLACE OF USE

"Any change of point of diversion or of manner, purpose or place of use of the waters of the Carson, Truckee or Walker River Basins may be made in either state pursuant to state law or applicable court decree, provided that such change shall not adversely affect the allocation of water to the other state. Either state, if permitted by state law, may permit a change to other use of water formerly consumed by natural subirrigation on meadows. It shall be the duty of each state to initiate proceedings before the commission if it believes that such change in the other state would adversely affect its allocation. In the event of the initiation of such a proceeding a commission hearing shall be held and the person desiring the change shall have the burden of establishing that such change would not adversely affect the allocation to the complaining state. In the event the person desiring the change does not establish that such change would not adversely affect the allocation to the complaining state, the commission shall enter such order as it deems appropriate to assure that the allocation to the complaining state is not adversely affected.

"ARTICLE XVII. IMPORTED WATER

"The provisions of this compact respecting allocation of water are applicable solely to the waters of the Truckee, Carson, and Walker River Basins and the Lake Tahoe Basin. To the extent that either state imports into the Truckee, Carson or Walker River Basins or the Lake Tahoe Basin water from another river or source the state making the importation shall have the exclusive use of such imported water unless by written agreement between the states it is otherwise provided. Nothing herein shall preclude either state from using such imported water as replacement or exchange water to meet such conditions as may be imposed by the commission pursuant to the provisions of this compact.

"ARTICLE XVIII. COMPACT EFFECT

"A. Each state and all persons using, claiming, or in any manner asserting any right to the use of the waters of Lake Tahoe, Truckee River, Carson River, and Walker River Basins, shall be subject to the terms of this compact.

"B. The provisions of this compact shall be self-executing and shall by operation of law be conditions of the various state permits, licenses, or other authorizations relating to the waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

"C. Nothing in this compact shall abridge, limit or derogate against any claim or right of anyone to the use of water in either state within the allocations to such state that could or may be made or established under state or federal law had this compact not been adopted; provided, that the place of use, under such right, of water from any of the four basins covered by this compact shall be limited to such basin or such other areas outside such basin as are permissible places of use of water from such basin under this compact.

"D. Nothing in this compact shall be construed as granting to any person or entity the right to divert, store, or use water.

"ARTICLE XIX. VIOLATIONS

"A. Violations or threatened violations of any of the provisions of this compact which come to the attention of the commission shall be promptly investigated by it. If after such investigation the commission determines further action is necessary it may take such action as it deems advisable including, but not limited to, the commencement of an action injunctive or otherwise in its own name in any court of general jurisdiction of the state where the violation has occurred or is threatened, or the United States District Court for the district where said violation has occurred or is threatened, or if it is determined by the commission appropriate to do so, refer the matter with its recommendations, if any, to an appropriate federal, state, or local official or agency or board for action.

"B. In any action concerned with any matter in which the commission has made a decision, the findings of the commission shall constitute prima facie evidence of the facts found.

"ARTICLE XX. RECOURSE TO COURTS

"Nothing in this compact shall be construed to limit or prevent either state or any person or entity from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of its provisions, provided that in all matters in which the commission is given jurisdiction by this compact to make a decision no such court action shall be commenced until the matter has been submitted to the commission for decision and decided by it, unless a decision by the commission has been unreasonably delayed.

"ARTICLE XXI. NONIMPAIRMENT OF RIGHTS OF UNITED STATES

"Except as provided in Article XXII nothing in this compact shall be construed as:

"A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

"B. Affecting any rights or powers of the United States of America, its agencies or instrumentalities in or to the waters of the Truckee, Carson, or Walker River Basins or the Lake Tahoe Basin, or its capacity to acquire rights in and to the use of said waters.

"C. Subjecting any property of the United States, its agencies or instrumentalities to taxation by either state or subdivision thereof.

"D. Subjecting any property of the United States of America, its agencies or instrumentalities to the laws of any state to an extent other than the extent to which such laws would apply without regard to this compact.

"ARTICLE XXII. RATIFICATION AND CONSENT

"This compact shall become effective when, but only if, "(1) It shall have been ratified by acts of the Legislature of each of the States of California and Nevada;

"(2) It shall have been consented to by act of Congress of the United States; and

"(3) Congress provides in its consent legislation or by separate legislation that the following provisions of the compact shall be binding on the agencies, wards, and instrumentalities of the United States of America:

"Article V, Section D
"Article V, Section F
"Article VI, Subsection B.1
"Article VI, Subsection B.3
"Article VI, Subsection B.4
"Article VI, Section D
"Article VII, Section A
"Article VII, Section B
"Article VII, Section C
"Article VII, Section D
"Article VII, Section E
"Article VIII, Subsection A.4(b)
"Article VIII, Subsection B.1
"Article VIII, Subsection B.5

"ARTICLE XXIII. TERMINATION

"This compact may be terminated any time by legislative consent of both states, but notwithstanding such termination all rights then established hereunder or recognized hereby shall continue to be recognized as valid.

"In witness whereof the commissioners have executed six counterparts hereof, each of which shall be and does constitute an original and one shall be deposited with the Administrator of General Services of the United States of America, and two of which shall be forwarded to the Governor of each signatory state, and one of which shall be made a part of the permanent records of the California-Nevada Compact Commission."

RESERVATION OF RIGHTS

SEC. 202. The right to alter, amend, or repeal this title is expressly reserved.

EFFECTIVE DATE

SEC. 203. The consent granted by this title shall take effect on the date the Secretary of the Interior certifies that conditions of section 107(a) have been satisfied.

Senator **Andrews**. We have talked about the glacial pace of things around here, and every now and then that is reaffirmed to us. I share with my colleagues, Senator Laxalt and Senator Hecht, the feeling that Congress should finally find a way to solve the longstanding problems of Pyramid Lake and the surrounding area.

I share their concern for the endangered fish which have their habitat there, and I certainly pledge the endeavors of this committee and its staff to try to obtain a fair and just solution to the problems faced by those who call the area home.

Our first witness this morning is Senator Laxalt. Senator, good to have you here.

Senator **Laxalt**. Thank you, Mr. Chairman.

STATEMENT OF HON. PAUL LAXALT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator **Laxalt**. Mr. Chairman, my statement will be short recognizing that we will have an extensive hearing process. And from time to time I assume that I will be consulted, as will Senator Hecht on this side.

Senator **Andrews**. You certainly will. And the staff of this committee, Senator, is looking forward to working with the staff of not only yourself, but also Senator Hecht.

Senator **Laxalt**. We have also present, looking at the witness list, literally all the people in Nevada who are involved in this issue. We have the water experts, we have the Governor of the State of Nevada, and the full delegation consisting of Senator Hecht and myself.

Senator **Andrews**. I don't think you left anybody home.

Senator **Laxalt**. No, I don't think we did. This is the reason we are delighted to see this kind of representation, because it represents graphically the importance that we attach to this piece of legislation.

I appreciate this opportunity to submit for the record my comments in support of S. 1558, the proposed settlement of water allocations from the Truckee and Carson Rivers, and the passage of the California and Nevada Water Compact.

The bill, as the chairman has already suggested, represents a comprehensive agreement on water issues which have been the subject of extensive litigation in the past. The key issues involved in this settlement include operation of the Stampede Reservoir, the Truckee River diversions to the Truckee-Carson Irrigation District—and we call that TCID out there—and maintenance of the Pyramid Lake fishery.

A part of the settlement involves the termination of existing litigation on these issues. I might say in that respect that this has been typical of protracted litigation which has cost the people involved literally millions and millions of dollars over many, many years. The bill requires the completion of an operation agreement for Stampede Reservoir, so the implementation of the legislation is based on that contingency.

And that, Mr. Chairman, is a matter that we have been working on here since the days of Senator Bible, whom I succeeded in this institution. We thought we had an agreement at the outset, or he did at least, in connection with how the Stampede Reservoir would be operated and how the costs should be allocated. Since that time we have had continual controversy.

It has often been said that, mile for mile, the Truckee River is the most litigated river in the Nation. I don't know if it is on par with Garrison, but perhaps so. Hopefully this dubious distinction can be passed on to someone else.

I remember clearly as Governor of Nevada, which was some time ago, I called an emergency session of the Nevada State Legislature to attempt to resolve the disputes surrounding this vital resource. Unfortunately, those early efforts were unsuccessful. But the Nevada State Legislature continues to work on the problems, and just this last session passed a bill sought by the major metropolitan water users to create a metropolitan water board. Frankly, I think that was overdue, long overdue.

This act shows that the local parties are finally making headway in settling longstanding conflicts in a spirit of compromise and progress. I hope we can follow that example. And while I have learned to temper my optimism about settling the Truckee and Carson allocations, I believe we can, I sincerely believe we can. I have often said out there that attempting to settle the Truckee and Carson would be like settling Mideast problems, or perhaps it would be more difficult to settle the water. I don't know. But I think in view of the homework that has been done by people here and out in the State that we are very close to finally achieving a settlement, recognizing perhaps there are additional concessions and compromises that maybe you have to work here in the congressional process.

So, I commend, Mr. Chairman, all the participants for their commitment to a definitive settlement manifested in their diligent negotiating sessions—these negotiating sessions have taken a long, long while and countless hours during the last several months—and for their willingness to understand others and compromise in order to achieve that settlement. That same spirit will hopefully carry forward as the committee works on the bill and into the necessary negotiations which will follow its passage.

The Senate will be called upon to approve of this settlement and to provide the wherewithal to make it work. And there are some dollars involved, and the members of the committee should understand that. I recognize that when we talk about dollars here we're talking about OMB. So, Senator Hecht and I, while it's on this side, will do all that we can to attempt to solicit cooperation from the people in OMB recognizing that's a practical problem in implementing this bill.

This is far and away preferable to the litigation and conflict of the past 60 years. Sixty years, Mr. Chairman, of this system has been involved in intensive conflict and litigation. The parties have shown their willingness to make tough but fair choices in the name of progress. So I hope, Mr. Chairman, the Senate will look at the overall package and its benefits and act in the same spirit.

I thank the chairman.

Senator **Andrews**. Thank you very much, Senator, for an excellent statement.

[Statement of Senator Laxalt follows:]

STATEMENT OF
SENATOR PAUL LAXALT
ON S. 1558
OCTOBER 2, 1985

Mr. Chairman:

I appreciate this opportunity to submit for the record my comments in support of S. 1558, the proposed settlement of water allocations from the Truckee and Carson rivers and the passage of the California-Nevada water compact.

The bill represents a comprehensive agreement on water issues which have been the subject of extensive litigation in the past. The key issues involved in this settlement include operation of the Stampede Reservoir, Truckee river diversions to the Truckee-Carson Irrigation District (TCID), and maintenance of the Pyramid Lake fishery. A part of the settlement involves the termination of existing litigation on these issues. The bill requires the completion of an operating agreement for Stampede

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It has often been said that, mile for mile, the Truckee is the most litigated river in the nation. Hopefully this dubious distinction can be passed on to someone else. As Governor of Nevada, I called an emergency session of the Nevada State Legislature to attempt to resolve the disputes surrounding this vital resource. Unfortunately, those early efforts were unsuccessful. But the Nevada State Legislature continues to work on the problems, and just this last session passed a bill sought by the major metropolitan water users to create a Metropolitan Water Board. This act shows that the local parties are finally making headway in settling long-standing conflicts in a spirit of compromise and progress. I hope we can follow that example, and while I have learned to temper my optimism about settling the Truckee and Carson allocations, I believe we can.

I commend all of the participants for their commitment to a definitive settlement, manifested in their diligent negotiating sessions, and for their willingness to understand others and compromise in order to achieve that settlement. That same spirit will hopefully carry forward as the Committee works on the bill and into the necessary negotiations which will follow its passage.

The Senate will be called upon to approve of this settlement and to provide the wherewithal to make it work. This is far and away preferable to the litigation and conflict of the past 60 years. The parties have shown their willingness to make tough but fair choices in the name of progress. I hope that the Senate will look at the overall package and its benefits, and act in the same spirit.

Senator ANDREWS. Obviously any piece of legislation resolving a longstanding controversy, such as this, involves money. It is the grease that makes things work around here and back home as well.

One of the things the administration, of course, has cautioned us on is that there be local participation. It is my understanding that there is local participation and that the parties involved are not requesting only Federal funds; is that correct?

Senator LAXALT. Well, this would be handled on a shared basis.

Senator ANDREWS. Does the Senator also feel that if this legislation is passed, the litigation will then essentially be a thing of the past?

Senator LAXALT. Well, let's hope so. I think it would be a sorry result if we proceed forward with this legislation, pass it, and then have continuing litigation. Nobody can forecast what will happen with respect to water. The chairman knows that and I know that.

Senator ANDREWS. Oh, very well.

Senator LAXALT. But I would hope that when we finally iron this out and compromise it, the litigation will finally come to an end out there. That's our fond hope. I hope it is realistic.

Senator ANDREWS. And this legislation is crafted, then, in the spirit of compromise to resolve the concerns of the majority of the parties involved.

Senator LAXALT. Yes; it is.

Senator ANDREWS. Thank you very much.

Senator LAXALT. There are some concerns, some latent concerns, some that have appeared since I thought the package had been worked out, and they have been brought to our attention. And I would tell the committee that the people who expressed these concerns and reservations will bring it to the attention of the committee, and I hope the committee would give them full and thorough consideration recognizing that by the time this is all done, I think—I think the time has come for us to resolve once and for all this longstanding dispute.

Senator **Andrews**. Well, it is the intention of this committee to do just that. And knowing my friend, the senior Senator from Nevada, I know that there is no way you would want us to do anything other than to find out where all the bodies are buried so we don't have something unanticipated coming at us afterward.

Senator **Laxalt**. I thank the chairman. That is exactly where we are coming from.

Senator **Andrews**. Thank you very much, Senator, for an excellent statement. Our next witness is Senator Chic Hecht, a Senator from the State of Nevada.

STATEMENT OF HON. CHIC HECHT, A U.S. SENATOR FROM THE STATE OF NEVADA

Senator **Hecht**. Thank you, Mr. Chairman. I appreciate the courtesy you have extended to us and to all our friends from Nevada who have traveled a long way to come here. By seeing the huge group, you understand how important this is to our State. And we are very fortunate we have a chairman like yourself who understands our problems.

I was in the Nevada Legislature when Senator Laxalt was then Governor Laxalt. I think that was 1968, wasn't it Paul?

Senator **Laxalt**. A long while ago.

Senator **Hecht**. Long ago. So, we have wrestled with this for some time. It is a pleasure for me to be here today to testify before this committee on the Pyramid Lake Paiute and Truckee River Settlement Act of 1985. This bill is intended to make it possible to bring to an end approximately 75 years of litigation and controversy in northern Nevada. This committee has reported legislation dealing with Indian claims and settlements before, but now it is being asked to wrestle with the granddaddy of them all.

After 4 years of intensive, difficult, and politically charged negotiations, the various parties have essentially reached a settlement. This committee will shortly be hearing some of the details of that settlement. My task this morning is not to dwell on those details, but to set the stage so that this committee can appreciate the importance of a settlement to the State of Nevada and the continuing sensitivity of that settlement.

The basic issue here is water, particularly the water of the Truckee and Carson Rivers. Approximately 15 lawsuits, past and present, have been before the courts on this issue since 1909.

At stake in this settlement legislation is the future economic growth of the booming Reno-Sparks area of Nevada; the continued survival and hopefully the rapid recovery of two threatened and endangered species of fish that are closely associated with the culture of the Pyramid Lake Paiute Tribe; the future of the Nation's oldest reclamation project, the Newlands project; the protection of important outdoor recreational water resources for the people of Nevada and the Nation; and the allocation of as yet unallocated waters of the Carson, Truckee, and Walker Rivers, and Lake Tahoe, between California and Nevada through ratification of the California-Nevada Compact, which comprises title II of this bill.

There are many parties who have an interest in this legislation, most of whom will be testifying today. Even though many people have been working on a settlement for 4 years, and during this time compromised on and resolved dozens of issues, there are still a few items which must be addressed, a few parties who need to be heard, and, if possible, accommodated in some way.

When Senator Laxalt and I introduced this bill in late July, and Congressmen Vucanovich and Reid introduced its companion measure, H.R. 3213, in the House, we knew we were not presenting the Congress with a final product. For instance, by late August, the principal parties had further refined the language of the bill we introduced in July and strengthened their agreement on a number of issues.

The committee staff has been provided with these small in number, but significant language changes, which enjoy the Nevada delegation's complete support. I am now convinced that all that can be done at the local level has been done.

It is now time for the Congress to act, to take S. 1558 and use it as a vehicle to define and resolve any remaining issues, and finally, to allow we in Nevada to put 75 years of conflict behind us so that all parties can concentrate on building for the future.

With a little help from the Congress, the Indian and non-Indian people in Nevada will be able to take the necessary steps to protect the culture and fishery resources of the Pyramid Lake Tribe, enable Reno-Sparks to grow and further contribute to the national economy, allow the Newlands project farmers to concentrate on cultivating their crops rather than expending their resources in the courts, and equitably allocate the as yet unallocated water of the Carson, Truckee, and Walker River systems, and Lake Tahoe between California and Nevada.

Mr. Chairman, I appreciate the opportunity to testify on this legislation, which is extremely important to all the people in Nevada, Indian and non-Indian alike.

Thank you for your courtesy.

Senator ANDREWS. Thank you very much, Senator.

[Statement of Senator Hecht follows:]

Testimony of Senator Chic Hecht

Before the Senate Select Committee on Indian Affairs, on S. 1558, the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

Mr. Chairman, distinguished members of the Committee, it is a pleasure for me to be here today to testify before this committee on the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

This bill is intended to make it possible to bring to an end approximately seventy-five years of litigation and controversy in northwestern Nevada. This committee has reported legislation dealing with Indian claims settlements before, but now it is being asked to wrestle with the granddaddy of them all.

After four years of intensive, difficult, and politically charged negotiations, the various parties have essentially reached a settlement. This committee will shortly be hearing some of the details of that settlement.

My task this morning is not to dwell on those details, but to set the stage so this committee can appreciate the importance of a settlement to the State of Nevada, and the continuing sensitivity of that settlement.

The basic issue here is water, particularly the water of the Truckee and Carson Rivers. Approximately 15 lawsuits, past and present, have been before the courts on this issue since 1909.

At stake in this settlement legislation is:

--the future economic growth of the booming Reno/Sparks area of Nevada,

--the continued survival and, hopefully, the rapid recovery of two threatened and endangered species of fish that are closely associated with the culture of the Pyramid Lake Paiute tribe,

--the future of the nation's oldest reclamation project, the Newlands Project,

--the protection of important outdoor recreational water resources for the people of Nevada and the nation, and

--the allocation of as yet unallocated waters of the Carson, Truckee and Walker Rivers, and Lake Tahoe, between California and Nevada, through ratification of the California-Nevada Compact, which comprises Title II of this bill.

There are many parties who have an interest in this legislation, most of whom will be testifying today. Even though many people have been working on a settlement for four years, and during this time compromised on and resolved dozens of issues, there are still a few items that must be addressed, a few parties who need to be heard, and, if possible, accomodated in some way.

When Senator Laxalt and I introduced this bill in late July, and Congressmen Vucanovich and Reid introduced its companion measure, H.R. 3213, in the House, we knew we were not presenting the Congress with a final product. For instance, by late August, the principal parties had further refined the language of the bill we introduced in July, and strengthened their agreement on a number issues. The Committee staff has been provided with these small in number, but significant language changes, which enjoy the Nevada delegation's complete support.

I am now convinced that all that can be done at the local level has been done. It is now time for the Congress to act, to take S. 1558 and use it as a vehicle to define and resolve any remaining issues, and finally to allow we in Nevada to put 75 years of conflict behind us, so that all parties can concentrate on building for the future.

With a little help from the Congress, the Indian and non-Indian people of Nevada will be able to take the necessary steps to protect the culture and fishery resources of the Pyramid Lake tribe, enable Reno/Sparks to grow and further contribute to the national economy, allow the Newlands project farmers to concentrate on cultivating their crops rather than expending their resources in the courts, and equitably allocate the as yet unallocated waters of the Carson, Truckee, and Walker River systems, and Lake Tahoe between California and Nevada.

Mr. Chairman, I appreciate the opportunity to testify on this legislation, which is extremely important to all the people of Nevada, Indian and non-Indian alike.

Senator ANDREWS. When you say this goes back a long time, it really does. In Nevada, the Newlands project, as I understand it, was one of the first western reclamation projects——

Senator HECHT. The first.

Senator ANDREWS [continuing]. And the Reclamation Act was passed just after the turn of the century. And, of course, a principal sponsor was a Senator by the name of Hansboro from North Dakota, who was then the chairman of the committee interested in Western reclamation. And he and Senator Newlands worked together on it.

We have been waiting even longer than that because we petitioned the Congress in 1886, when we were a territory to the Garrison project. So, you know, welcome to the club. We have been assisting Nevada for years. In fact, when I was a newly hatched Member of Congress in 1963 and 1964 I served on the Interior Committee in the House; and the Washoe project was then under discussion. So, I learned about that until I escaped from that kind of work to go onto the Appropriations Committee in 1965.

But this is a project, of course, that has been ongoing for a number of years, and has been testified to and supported by the people of the State of Nevada not just with your current very able and competent representation, but generations ago Nevada spoke out for this project, and we are totally aware of that. And no one is more aware of the time it takes to get these things done than the chairman of this committee. So, we appreciate it and we sympathize with you, and yours was an excellent statement.

Our next witness is the Honorable Barbara F. Vucanovich, a Congresswoman from the State of Nevada. We are glad to have you here, Barbara.

Mrs. VUCANOVICH. Thank you, Mr. Chairman.

STATEMENT OF HON. BARBARA F. VUCANOVICH, A MEMBER OF CONGRESS FROM THE STATE OF NEVADA

Mrs. VUCANOVICH. I would like to thank you for allowing me to express my concerns about this, and also to welcome our Nevada constituents. We were concerned that if a bomb dropped off in here we'd lose half of the State with all of our elected people.

I am pleased to speak on behalf of the bill which I have also introduced in the House of Representatives. And I do think it is of prime importance to the State of Nevada. And as you well know, for over 80 years Indian water rights and related water resource issues along the Truckee and Carson River systems have been the focus of conflict in northern Nevada.

There have been some 15 separate lawsuits, many of which are still pending, and they have involved every major holder of water rights along these rivers. And the result of this conflict has generated a variety of controversies within the State. And despite years of legal maneuvering, the problems remain.

For example, the needs expressed by the Indians haven't been met, and the farmers and ranchers have spent tens of thousands of dollars in legal fees to little or no avail. Finally, the growth of the Reno-Sparks area has been literally halted. And even when decisions were finally reached regarding one aspect of the river's operation or management, the outstanding problems, due to the complexity of issues and crosscutting litigation, prevented any real action.

Since 1981, the Reagan administration has encouraged the settlement of Indian water rights claims through negotiation rather than litigation. In the arid West, where competition for water is intense, litigated solutions to water problems generally result in nothing more than further litigation.

Through negotiation we can bring the interested parties together and reach a solution that's acceptable to all of the parties involved. We have seen the effectiveness of such approaches, as demonstrated by the Papago and Ak-Chin settlements which were enacted by the last Congress.

In negotiating the Pyramid Lake and Truckee River Settlement Act, I am happy to say that all of the parties involved were active participants. These participants, whom I commend, include the Pyramid Lake Paiute Tribe, the Truckee-Carson Irrigation District, Sierra Pacific Power Co., the Truckee-Carson Conservancy District, the cities of Reno and Sparks, the Washoe County Conservancy District, the States of Nevada and California, and the Department of the Interior.

Obviously this settlement is not perfect. Negotiated settlements seldom are. Compromise and a willingness by all of the parties involved to give a little to gain a lot is a key part of this agreement. And that is why I caution those who would like to renegotiate the deal at this critical point.

Important issues during the negotiations included the operation of Stampede Reservoir, which is part of the Washoe reclamation project in California, diversions from the Truckee River to the Newlands reclamation project, now operated by the Truckee-Carson Irrigation District in conjunction with the operating criteria of the Secretary of the Interior, and the maintenance of the Pyramid Lake fisheries.

And there are eight major points of the proposed settlement, and I will just leave those as part of the record, if that is all right with you.

Fortunately the agreement itself does not require major construction or Federal financing. Direct Federal contributions would total $31 million for the settlement fund and the tribal trust fund. The Federal Government would also forgive the $1.5 million repayment contract with the Truckee-Carson Irrigation District and assume liability for Pyramid Lake level damages.

The State of Nevada would provide $8 million for the settlement fund, roughly one-quarter of the total cost for implementing this agreement. This compares most favorably with the levels of Federal financing that were provided to earlier water rights settlements approved by this body.

This agreement, I believe, represents a reasonable approach to solving the problems which have been generating controversy in Nevada for far too many years. It also represents a fiscally responsible approach to the problem. With both of these in mind, I would certainly ask this committee to act expeditiously on behalf of Nevada and give this settlement your consideration and approval.

Thank you very much, Mr. Chairman, for the opportunity to testify.

Senator **Andrews**. Thank you very much for an excellent statement, and we will look forward to working with you in the months ahead as we move this bill along. We appreciate your appearance this morning.

Mrs. **Vucanovich**. Thank you.

[Statement of Mrs. Vucanovich follows:]

STATEMENT OF
BARBARA F. VUCANOVICH, M.C.
ON S. 1558

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

OCTOBER 2, 1985

MR. CHAIRMAN, ALLOW ME TO FIRST EXPRESS MY SINCERE APPRECIATION TO YOU FOR HOLDING THIS HEARING AND TO WELCOME MY MANY CONSTITUENTS WHO WILL APPEAR HERE TODAY TO TESTIFY ON THIS VERY IMPORTANT LEGISLATION.

TODAY I AM PLEASED TO SPEAK ON BEHALF OF A BILL WHICH I HAVE ALSO INTRODUCED IN THE HOUSE OF REPRESENTATIVES, AND WHICH I CONSIDER TO BE OF PRIME IMPORTANCE TO THE STATE OF NEVADA.

FOR OVER 80 YEARS, INDIAN WATER RIGHTS AND RELATED WATER RESOURCE ISSUES ALONG THE TRUCKEE AND CARSON RIVER SYSTEMS HAVE BEEN THE FOCUS OF CONFLICT IN NORTHERN NEVADA.

THERE HAVE BEEN SOME 15 SEPARATE LAWSUITS, MANY OF WHICH ARE STILL PENDING, AND HAVE INVOLVED EVERY MAJOR HOLDER OF WATER RIGHTS ALONG THESE RIVERS. THE RESULT OF THIS CONFLICT HAS GENERATED A VARIETY OF CONTROVERSIES WITHIN THE STATE, AND DESPITE YEARS OF LEGAL MANEUVERING, THE PROBLEMS REMAIN.

FOR EXAMPLE, THE NEEDS EXPRESSED BY THE INDIANS HAVE NOT BEEN MET. THE FARMERS AND RANCHERS HAVE SPENT TENS OF THOUSANDS OF DOLLARS IN LEGAL FEES TO LITTLE OR NO AVAIL. FINALLY, THE GROWTH OF THE RENO-SPARKS AREA HAS BEEN LITERALLY HALTED. EVEN WHEN DECISIONS WERE FINALLY REACHED REGARDING ONE ASPECT OF THE RIVERS' OPERATION OR MANAGEMENT, THE OUTSTANDING PROBLEMS, DUE TO THE COMPLEXITY OF ISSUES AND CROSSCUTTING LITIGATION, PREVENTED ANY REAL ACTION.

SINCE 1981, THE REAGAN ADMINISTRATION HAS ENCOURAGED THE SETTLEMENT OF INDIAN WATER RIGHTS CLAIMS THROUGH NEGOTIATION RATHER THAN LITIGATION. IN THE ARID WEST, WHERE COMPETITION FOR WATER IS INTENSE, LITIGATED SOLUTIONS TO WATER PROBLEMS GENERALLY RESULT IN NOTHING MORE THAN FURTHER LITIGATION.

THROUGH NEGOTIATION, WE CAN BRING THE INTERESTED PARTIES TOGETHER AND REACH A SOLUTION THAT IS ACCEPTABLE TO ALL OF THE PARTIES INVOLVED. WE HAVE SEEN THE EFFECTIVENESS OF SUCH APPROACHES, AS DEMONSTRATED BY THE PAPAGO AND AK-CHIN SETTLEMENTS WHICH WERE ENACTED BY THE LAST CONGRESS.

IN NEGOTIATING THE PYRAMID LAKE AND TRUCKEE RIVER SETTLEMENT ACT, I AM HAPPY TO SAY THAT ALL OF THE PARTIES INVOLVED WERE ACTIVE PARTICIPANTS. THESE PARTICIPANTS, WHICH I COMMEND, INCLUDE THE PYRAMID LAKE PAIUTE TRIBE, THE TRUCKEE-CARSON IRRIGATION DISTRICT, SIERRA PACIFIC POWER COMPANY, THE TRUCKEE-CARSON CONSERVANCY DISTRICT, THE CITIES OF RENO AND SPARKS, THE WASHOE COUNTY CONSERVANCY DISTRICT, THE STATES OF NEVADA AND CALIFORNIA, AND THE DEPARTMENT OF THE INTERIOR.

THIS SETTLEMENT IS NOT PERFECT. NEGOTIATED SETTLEMENTS SELDOM ARE. COMPROMISE AND A WILLINGNESS BY ALL OF THE PARTIES INVOLVED TO GIVE A LITTLE TO GAIN A LOT IS A KEY PART OF THIS AGREEMENT. THAT IS WHY I CAUTION THOSE WHO WOULD LIKE TO RENEGOTIATE THE DEAL AT THIS CRITICAL POINT.

IMPORTANT ISSUES DURING THE NEGOTIATIONS INCLUDED THE OPERATION OF STAMPEDE RESERVOIR, WHICH IS PART OF THE WASHOE RECLAMATION PROJECT IN CALIFORNIA, DIVERSIONS FROM THE TRUCKEE RIVER TO THE NEWLANDS RECLAMATION PROJECT, NOW OPERATED BY THE TRUCKEE-CARSON IRRIGATION DISTRICT IN CONJUNCTION WITH THE OPERATING CRITERIA OF THE SECRETARY OF THE INTERIOR, AND THE MAINTENANCE OF THE PYRAMID LAKE FISHERIES.

THE EIGHT MAJOR POINTS OF THE PROPOSED SETTLEMENT TO RESOLVE THESE ISSUES ARE:

- FIRST, THE TERMINATION OF LITIGATION.
- SECOND, THE DEVELOPMENT OF A FISH PROPAGATION PROGRAM FUNDED BY A SETTLEMENT FUND. THE SETTLEMENT FUND WILL INVOLVE A ONE-TIME FEDERAL APPROPRIATION OF $21 MILLION, AND AN $8 MILLION CONTRIBUTION FROM THE STATE OF NEVADA IN THE FORM OF AN INTEREST-ACCRUING TRUST FUND ACCOUNT.
- THIRD, THE ESTABLISHMENT OF A MINIMUM LEVEL FOR PYRAMID LAKE.
- FOURTH, THE ADOPTION OF A "MENU APPROACH" FOR PROVIDING ADDITIONAL WATER FLOWS INTO PYRAMID LAKE TO MEET THE MINIMUM LEVEL REQUIREMENTS. THIS MENU APPROACH INCLUDES A PROCESS FOR EXECUTING THE STAMPEDE RESERVOIR OPERATING AGREEMENT.
- FIFTH, THE NEGOTIATION OF TRUCKEE RIVER DIVERSION CRITERIA BY THE IRRIGATION DISTRICT AND THE DEPARTMENT OF THE INTERIOR. THESE CRITERIA MUST BE AGREED TO BY THE STATE OF NEVADA AND THE PAIUTE TRIBE.
- SIXTH, THE CREATION OF A $10 MILLION TRIBAL TRUST FUND.
- SEVENTH, THE ESTABLISHMENT OF MAXIMUM DAMAGE PAYMENTS OF $7 MILLION TO THE TRIBE BY THE FEDERAL GOVERNMENT, SHOULD THE PYRAMID LAKE CRITERIA NOT BE MET.
- FINALLY, THE RATIFICATION OF THE CALIFORNIA-NEVADA COMPACT, WHICH WAS APPROVED BY THEN-GOVERNORS REAGAN AND LAXALT IN 1969.

IT IS CRITICAL THAT CONGRESS UNDERSTAND THAT THE OPERATING CRITERIA FOR STAMPEDE RESERVOIR AND THE TRUCKEE-CARSON IRRIGATION DISTRICT'S DIVERSIONS, BOTH OF WHICH ARE CONTAINED IN VARIOUS SECTIONS OF THIS PROPOSED AGREEMENT, ARE SUBJECT TO MULTILATERAL AGREEMENTS. THE SETTLEMENT PROVIDES FOR A 12 MONTH NEGOTIATING PERIOD WITH THE POTENTIAL FOR A 6 MONTH EXTENSION. THE ENTIRE SETTLEMENT PACKAGE IS CONDITIONED UPON THE SUCCESSFUL RESOLUTION OF THESE TWO ISSUES.

FORTUNATELY, THE AGREEMENT ITSELF DOES NOT REQUIRE MAJOR CONSTRUCTION OR FEDERAL FINANCING. DIRECT FEDERAL CONTRIBUTIONS WOULD TOTAL $31 MILLION FOR THE SETTLEMENT FUND AND THE TRIBAL TRUST FUND. THE FEDERAL GOVERNMENT WOULD ALSO FORGIVE THE $1.5 MILLION REPAYMENT CONTRACT WITH THE TRUCKEE-CARSON IRRIGATION DISTRICT AND ASSUME LIABILITY FOR PYRAMID LAKE LEVEL DAMAGES. THE STATE OF NEVADA WOULD PROVIDE $8 MILLION FOR THE SETTLEMENT FUND, ROUGHLY ONE QUARTER OF THE TOTAL COST FOR IMPLEMENTING THIS AGREEMENT. THIS COMPARES MOST FAVORABLY WITH THE LEVELS OF FEDERAL FINANCING THAT WERE PROVIDED TO EARLIER WATER RIGHTS SETTLEMENTS APPROVED BY THIS BODY.

THIS AGREEMENT REPRESENTS A REASONABLE APPROACH TO SOLVING THE PROBLEMS WHICH HAVE BEEN GENERATING CONTROVERSY IN NEVADA FOR FAR TOO MANY YEARS. IT ALSO REPRESENTS A FISCALLY RESPONSIBLE APPROACH TO THE PROBLEM. WITH BOTH OF THESE IN MIND, I WOULD ASK THIS COMMITTEE TO ACT EXPEDITIOUSLY ON BEHALF OF NEVADA AND GIVE THIS SETTLEMENT YOUR CONSIDERATION AND APPROVAL.

Senator **Andrews**. Our next witness is Congressman Harry Reid representing the State of Nevada. Welcome to the committee, Congressman Reid.

Mr. **Reid**. Thank you, Mr. Chairman.

STATEMENT OF HON. HARRY REID, A MEMBER OF CONGRESS FROM THE STATE OF NEVADA

Mr. **Reid**. Thank you for the opportunity of allowing me to testify in support of S. 1558, the Pyramid Lake Paiute and Truckee River Settlement Act of 1985. I have cosponsored this legislation along with Congresswoman Barbara Vucanovich in the House. The House Interior and Insular Affairs Committee will hold a hearing on this bill tomorrow.

This legislation is the culmination of years of negotiations and will lay to rest several longstanding conflicts surrounding western Nevada's water resources.

Specifically, the Pyramid Lake Paiute and Truckee River Settlement Act will maintain and enhance Pyramid Lake and its fish resources, assist the economic development of Pyramid Lake Paiute Tribe, resolve controversies affecting the Truckee River, and assure needed municipal and industrial water to Washoe County and its principal cities.

In addition, the bill ends all litigation surrounding the Truckee River, Pyramid Lake, and the Stampede Reservoir. Finally, S. 1558 ratifies the California-Nevada Compact which allocates the water at Lake Tahoe and in the Truckee, Carson, and Walker River basins to the two States.

As mentioned earlier, S. 1558 is a comprehensive proposal designed to address the concerns and ameliorate the conflicts of many parties who depend upon these water resources. Section 104, for example, deals with the Pyramid Lake and Pyramid Lake Paiute Tribe. Pyramid Lake, a desert lake fed by the Truckee River, lies approximately 30 miles north of Reno. The fish resources of Pyramid Lake include the cui-ui, found only in Pyramid Lake, and the Lahontan cutthroat trout. The U.S. Fish and Wildlife Service has listed the cui-ui as an endangered species and the Lahontan cutthroat trout as a threatened species.

For centuries the Paiute Indians have depended on Pyramid Lake's fishery to sustain them. Truckee River diversions have caused a decline in the amount of water flowing into the lake and have cut off the fishes' access to spawning grounds. Consequently, each diversion threatens the lake, the fisheries, and the tribe itself.

Recent court decisions have upheld the claims of the Pyramid Lake Indian Tribe to sufficient water to maintain its fishery. In fact, Pyramid Lake is given priority to use water from the Stampede Reservoir on the Truckee River in California over the cities of Reno and Sparks. These northern Nevada cities are left in limbo without the necessary water supply for industrial and municipal use.

This bill is designed to solve this problem. A settlement fund is created by a one-time Federal contribution and also a contribution from the State of Nevada. This fund will create a fish propagation program to enhance the habitat for the Lahontan trout and the cui-ui, so important to the Pyramid Lake Indians.

In order to protect the integrity of Pyramid Lake, the Secretary of the Interior is required to provide sufficient waterflows into the lake to maintain the level. The minimum lake level of 3,795 feet above sea level is established as a 10-year rolling average with a 2-year minimum of 3,786 feet. The current level of Pyramid Lake is 3,812 feet. If the Secretary fails to meet his obligation to maintain the lake level, damages must be paid which are fixed at $7 million a year. To assist the economic development of the tribe, a $10 million tribal trust fund is also established.

It is important to note that the Secretary of the Interior is authorized to enter into a contract on the sale of water from Stampede Reservoir. This specific authorization is necessary because of pending litigation. By negotiating an agreement concerning the Stampede Reservoir, the needs of the tribe, the cities of Reno and Sparks, and other users can be met. Any agreement pertaining to Stampede Reservoir would also protect the interests of the State of California.

Several costly lawsuits are dismissed under this bill. This provision will benefit all water users, including agricultural interests, who have spent several million dollars to determine their rights to surplus waters.

Finally, the Pyramid Lake Paiute and Truckee River Settlement Act seeks congressional approval of the California-Nevada Interstate Compact. The State of Nevada considers the ratification of the California-Nevada Compact tantamount to the successful resolution of the problems rising from each State's use of a common and limited water supply.

In 1955, legislation was implemented which initiated compact negotiations between California and Nevada. Each State established a commission for the purpose of negotiating an interstate compact to provide for the equitable distribution and use of the waters of Lake Tahoe and the Truckee, Carson, and Walker River basins. After 13 years of negotiations, provisions of the interstate compact were set forth.

The compact was first ratified by the Nevada Legislature in 1969, when Senator Laxalt was Governor, myself, and Governor Bryan of Nevada were in the legislature at that time as members of the assembly. The compact was ratified 1 year later by the California Legislature. The compact was amended by the Nevada Legislature in 1971 to conform with the measure approved by California. Congress, though, has not seen fit to ratify the document principally because of the pending litigation.

A result of years and countless hours of often painful negotiations, the Pyramid Lake Paiute and Truckee River Settlement Act is a comprehensive package which addresses the needs and concerns of western Nevada water users. The bill protects the interests of the Pyramid Lake Paiute Tribe and the integrity of the lake itself.

Threatened and endangered fish species fare well under the act, as I have pointed out. The cities of Reno and Sparks are assured of the availability of needed water so anticipated growth can continue. Agricultural interests are entitled to necessary diversions.

Longstanding water disputes are settled, thereby ending costly legal battles. California and Nevada are granted the rights to surplus water.

Mr. Chairman and members of the committee, I cannot stress enough the importance of the total package which should be accepted. S. 1558 is a carefully crafted proposal designed to address the concerns of all parties who depend upon the flows of the Truckee, Carson, or Walker Rivers and their tributaries. Alteration of the bill would be disastrous as each section depends upon approval of the other. In short, timely passage of this bill is imperative.

Thank you very much.

[Statement of Mr. Reid follows:]

STATEMENT OF THE

HONORABLE HARRY REID

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

S. 1558: THE PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT OF 1985

October 2, 1985

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify in support of S. 1558, the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985." introduced by Senator Paul Laxalt and Senator Chic Hecht. I have cosponsored identical legislation, introduced by Congresswoman Barbara Vucanovich, in the House. The House Interior and Insular Affairs Committee will hold a hearing on this bill tomorrow.

This legislation is the culmination of years of negotiations and will lay to rest several long-standing conflicts surrounding Western Nevada's water resources.

Specifically, the Pyramid Lake Paiute and Truckee River Settlement Act will maintain and enhance Pyramid Lake and its fish resources, assist the economic development of the Pyramid Lake Paiute Tribe, resolve controversies affecting the Truckee River, and assure needed municipal and industrial water to Washoe County and its principal cities. In addition, the bill ends all litigation surrounding the Truckee River, Pyramid Lake, and the Stampede Reservoir. Finally, S. 1558 ratifies the California-Nevada Compact which allocates the water at Lake Tahoe and in the Truckee, Carson and Walker River Basins to the two states.

As mentioned earlier, S. 1558 is a comprehensive proposal designed to address the concerns and ameliorate the conflicts of many parties who depend upon these water sources. Section 104 of the bill deals with Pyramid Lake and the Pyramid Lake Paiute Tribe. Pyramid Lake, a desert lake fed by the Truckee River, lies approximately 30 miles north of Reno. The fish resources of Pyramid Lake include the cui-ui - found only in Pyramid Lake - and the Lahontan cutthroat trout. The U.S. Fish and Wildlife Service has listed the cui-ui as an endangered species and the Lahontan cutthroat trout as a threatened species.

For centuries, the Paiute Indians have depended on Pyramid Lake's fishery to sustain them. Truckee River diversions have caused a decline in the amount of water flowing into the Lake and have cut off the fishes' access to spawning grounds. Consequently, each diversion threatens the Lake, the fisheries, and the Tribe itself.

Recent Court decisions have upheld the claims of the Pyramid Lake Indian tribe to sufficient water to maintain its fishery. In fact, Pyramid Lake is given priority to use water from the Stampede Reservoir on the Truckee River in California over the cities of Reno and Sparks. These Northern Nevada cities are left in limbo without the necessary water supply for industrial and municipal use.

S. 1558 is designed to solve this problem. A settlement fund is created financed by a one-time federal contribution of $21 million and an $8 million contribution from the State of Nevada. This fund will create a fish propagation program to enhance the habitat for the Lahontan cutthroat trout and the cui-ui - so important to the Pyramid Lake Indians.

In order to protect the integrity of Pyramid Lake, the Secretary of the Interior is required to provide sufficient water flows into the Lake to maintain the level. The minimum Lake level of 3,794 feet above sea level is established as a 10-year rolling average, with a 2-year minimum level of 3,786 feet. The current level of Pyramid Lake is 3,812 feet. If the Secretary fails to meet his obligation to maintain the Lake level, damages must be paid which are fixed at $7 million a year.

To assist the economic development of the tribe, a $10 million tribal trust fund is also established.

It is important to note that the Secretary of the Interior is authorized to enter into a contract on the sale of water from Stampede Reservoir. This specific authorization is necessary because of pending litigation. By negotiating an agreement concerning the Stampede Reservoir, the needs of the Tribe, the Cities of Reno and Sparks, and other users can be met. Any agreement pertaining to Stampede Reservoir would also protect the interests of the State of California.

Several costly lawsuits are dismissed under the bill. This provision will benefit all water users, including agricultural interests who have spent several million dollars to determine their rights to surplus waters.

Finally, the "Pyramid Lake Paiute and Truckee River Settlement Act" seeks Congressional approval of the California-Nevada Interstate Compact. The State of Nevada considers the ratification of the California-Nevada Compact tantamount to the successful resolution of the problems rising from each state's use of a common and limited water supply.

In 1955, legislation was implemented which initiated compact negotiations between California and Nevada. Each state established a commission for the purpose of negotiating an interstate compact to provide for the equitable distribution and use of the waters of Lake Tahoe and the Truckee, Carson and Walker River Basins. After 13 years of negotiations, provisions of the interstate compact were set forth. The Compact was first ratified by the Nevada Legislature in 1969 and by the California Legislature in 1970. The Compact was amended by the Nevada Legislature in 1971 to conform with the measure approved by California. Congress has not seen fit to ratify the document because of pending litigation.

A result of years and countless hours of often painful negotiations, the "Pyramid Lake Paiute and Truckee River Settlement Act" is a comprehensive package which addresses the needs and concerns of Western Nevada water users. The bill protects the interests of the Pyramid Lake Paiute Tribe and the integrity of the Lake itself. Threatened and endangered fish species fare well under the Act. The Cities of Reno and Sparks are assured the availability of needed water so anticipated growth can continue. Agricultural interests are entitled to necessary diversions. Long-standing water disputes are settled thereby ending costly legal battles. California and Nevada are granted the rights to surplus water.

I cannot stress the importance of the total package which must be accepted in its entirely. S. 1558 is a carefully crafted proposal designed to address the concerns of all parties who depend upon the flows of the Truckee, Carson and Walker Rivers and their tributaries. Alteration of the bill will be disastrous as each section depends upon approval of the other. In short, timely passage of S. 1558 is imperative. Thank you.

Senator **Andrews**. Thank you very much, Congressman, for an excellent statement. Senator Gorton, do you have any questions?

Senator **Gorton**. No, Mr. Chairman.

Senator **Andrews**. Senator Burdick, do you have any questions?

Senator **Burdick**. No, I don't.

Senator **Andrews**. Thank you for appearing. We appreciate you taking the time to come. Our next witness will be the Honorable Richard A. Bryan, the Governor of the State of Nevada. Governor, welcome to our committee. We are most pleased that you could come. We are looking forward to hearing your testimony.

Let me assure you, Governor, and I am sure you have testified many times before congressional committees, every word that you have in your prepared statement will appear as though it has been uttered and you can summarize in anyway you choose.

We're glad to have you here.

Governor **Bryan**. Mr. Chairman, thank you very much. And I think you'll be relieved to know that I spent a couple of hours this morning in editing the text down recognizing the importance of the time that you and your colleagues have.

And if I might be permitted to extend by way of you, as the chairman, a special acknowledgement to an old friend of mine, with whom I was privileged to serve as attorney general in my own State when he served ably in that capacity as the attorney general in the State of Washington, Senator, good morning to you as well.

Senator **Andrews**. The Senator from Washington has an attorney general axis around here. Senator Rudman was an attorney general, our former Gov. Alan Olsen was an attorney general. Everytime they get together, you know, it is this old club.

Governor **Bryan**. We have talked a lot about fish this morning, Mr. Chairman, and I think that Senator Gorton was responsible for the spawning grounds of attorney generals, if I might note that.

Senator **Andrews**. Oh, he is the eminent expert on fishing rights in the State of Washington, and I am sure that extends across a good deal of territory in the West.

STATEMENT OF HON. RICHARD H. BRYAN, GOVERNOR, STATE OF NEVADA

Governor **Bryan**. Mr. Chairman, as Governor of the State of Nevada, I appear here before your committee this morning on behalf of my State and in support of the legislation which you have before you. As you have been told, conflicts regarding the allocation, distribution, and use of water supplies of the Truckee, Carson, and Walker River systems, and the Lake Tahoe basins have raged for many years.

It is not uncommon and certainly understandable that, as competition for very limited water supplies increase, disagreements and conflicts escalate, and thus it becomes imperative to resolve these issues in the best interest of the parties involved and the affected citizens of our respective States and the public in general.

The legislation before you would accomplish that purpose. It would settle conflicts not only between the States of California and Nevada, but among the water users in those respective States. Specific provisions of the legislation have previously been called to your attention. Others will elaborate on other provisions.

It is, in my judgment and in the judgment of the State of Nevada, that the long-term best interest of the United States, the States of California and Nevada, and their respective political subdivisions, as well as the Pyramid Lake Paiute Tribe that a permanent settlement of this litigation should be achieved.

The provisions of this settlement will, in addition to permitting resolution of the expensive and lengthy litigation, enhance the fishery in the Lower Truckee River, assist the economic development of the Pyramid Lake Tribe, and provide needed municipal and industrial water for western Nevada.

Water deliveries to Pyramid Lake, enhancement of the fishery program, implementation of the water management procedure, and execution of a contract for the yield of Stampede Reservoir are essential provisions of this legislation.

In addition, protection of the stillwater water life management area, and the Carson Lake, are critically important to the wildlife and recreational needs of western Nevada.

In 1983, the State legislature authorized a contribution of up to $8 million as part of the settlement cost of this ancient controversy. Nevada's financial participation is certainly responsive to the Federal administration's insistence on cost sharing by non-Federal entities.

Title II, as you have been told, contains the provisions of a bistate compact between Nevada and California, which would be ratified if the Congress enacts this legislation. The genesis of this compact dates back to the early 1930's, as conflicts between the two States arose over the administration and distribution of waters of the Truckee, Carson, and Walker Rivers and Lake Tahoe.

The compact is predicated upon the following basic principles. It recognizes the existing rights and beneficial uses of the various waters. Waters not needed to satisfy these required uses are divided in proportion to the water needs of the two States. Uses of water made under Federal claims in each State are considered as benefiting the State in which the use is made, and hence are chargeable against the allocation of that State.

The compact is binding upon the agencies, wards, and instrumentalities of the United States. These provisions to which the United States would agree to be bound concern only the total amount of the water allocated to each State. It is of the utmost importance to understand that the United States is not bound to any particular use within either of the two States, nor to any particular development of any future project within the States. It would only be bound with respect to the allocations of water between the two respective States. Failure of the United States to agree to the allocations provided in the compact would nullify the force and effect of the substantive provisions of the compact.

It is significant to understand, as has previously been pointed out, that the compact was first ratified by the Nevada Legislature in 1969, and the California Legislature in 1970, and amended by the Nevada Legislature in 1971 to conform identically with the document ratified by California a year earlier. Congressional ratification has not been secured because of the continuing litigation that would be settled and dismissed under the provisions of this act.

The States of Nevada and California have operated under and complied with the provisions of the compact over the 14-year period, from 1970 to date. This period of time has conclusively demonstrated the validity and effectiveness of the compact and further confirms that it does, in fact, provide for an equitable allocation of water between the States in a manner which is not detrimental to, nor adverse to the interest or perogatives of any water user or interest of either State.

On behalf of the State of Nevada, I respectfully urge you and your committee and the Congress to give favorable consideration to the legislation before you as the vehicle to resolve longstanding, continuing, and potentially extended conflicts relating to the limited water supplies of the Truckee, Carson, and Walker Rivers, and of Lake Tahoe.

Thank you very much, Mr. Chairman.

Senator ANDREWS. Thank you very much, Governor, for an excellent statement.

[Mr. Bryan's prepared statement follows:]

TESTIMONY OF RICHARD H. BRYAN, GOVERNOR, STATE OF NEVADA, BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, AND COMMITTEE ON INTERIOR AND INSULAR AFFAIRS, U.S. HOUSE OF REPRESENTATIVES

REGARDING A BILL TO SETTLE CERTAIN CLAIMS AFFECTING THE PYRAMID LAKE PAIUTE INDIAN TRIBE OF NEVADA AND FOR OTHER PURPOSES—WASHINGTON, DC, OCTOBER 2-3, 1985

Mr. Chairman, my name is Richard Bryan, and as Governor of the State of Nevada, I appear here this morning on behalf of the State of Nevada in support of the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985". Conflicts regarding the allocation, distribution and use of water supplies of the Truckee, Carson and Walker Rivers and Lake Tahoe Basins have raged for many years.

It is not uncommon and certainly understandable that as competition for very limited water supplies increases, that disagreements and conflicts escalate and, thus, it becomes imperative to resolve these issues in the best interest of the parties involved and the affected citizens and public.

The legislation before you would accomplish that purpose not only between the States of California and Nevada, but among the water users in the respective states.

Specific provisions of the legislation have been, and will be elaborated upon by other persons testifying. As indicated in the bill, lawsuits which have proliferated have been expensive and time consuming for all participants and may have a profound adverse impact upon my State.

It is in the long term best interest of the United States, the States of California and Nevada and their respective political subdivisions, as well as the Pyramid Lake Paiute Tribe, that a permanent settlement of this litigation be achieved. The provisions of this settlement will, in addition to permitting resolution of the expensive and lengthy litigation, enhance the fishery on the Lower Truckee River, assist the economic development of the Pyramid Lake Tribe and provide needed municipal and industrial water in Western Nevada.

Water deliveries to Pyramid Lake, enhancement of the fishery program, implementation of a water management procedure, and execution of contract for the yield of Stampede Reservoir are essential provisions of the legislation. Protection of the Stillwater Wildlife Management Area and the Carson Lake are critically important to the Wildlife and recreational needs of Western Nevada.

In 1983, the Nevada Legislature authorized a contribution of up to Eight-Million Dollars ($8-million) as the State's share of the costs of settlement of this ancient controversy. Nevada's financial participation is certainly responsive to the Federal Administration's insistence on cost-sharing by non-federal entities.

Title II contains the provision of a bi-state compact between Nevada and California which would be ratified if the Congress enacts this legislation.

The genesis of this compact dates have to the early 1930's as conflicts between the two states arose over administration and distribution of the waters of the Truckee, Carson and Walker Rivers and Lake Tahoe.

As a result of all these conflicts, in 1955, the Legislatures of the two States established a Commission for the purpose of negotiating an Interstate Compact. Federal legislation has been passed authorizing negotiations and providing for the appointment and participation of a Federal representative.

The compact is predicated upon the following basic principles. Recognizes existing rights and beneficial uses of available waters. Waters not needed to satisfy these required uses are divided in proportion to the water needs of the two States. Uses of water made under Federal claims in each State are considered as benefitting the State in which the use is made and, hence, are charged against the allocation of that State.

The Compact sets forth specific allocations of water for use in the Lake Tahoe Basin and the three rivers Truckee, Carson, Walker. The Compact is binding upon the agencies, wards and instrumentalities of the United States. These provisions to which the United States would agree to be bound, concern only the total amount of water allocated to each State. It is of the utmost importance to understand that the United States is not bound to any particular use within either of the two States nor to any particular development of any future project within the States, but would only be bound with respect to the allocations of water between the two respective States.

Failure of the United States to agree to the allocations provided in the Compact would nullify the force and effect of the substantive provisions of the Compact.

It is significant to understand that the Compact was first ratified by the Nevada Legislature in 1969, by the California Legislature in 1970, and amended by the Nevada Legislature in 1971 to conform identically with the document ratified by California a year earlier. Congressional ratification has not been secured because of the continuing litigation that would be settled and dismissed under the provisions of this Act. The States of Nevada and California have operated under and complied with the provisions of the Compact over the fourteen year period from 1970 to date. This period of time has conclusively demonstrated the validity and effectiveness of the Compact and further confirms that it does, in fact, provide for an equitable allocation of water between the States in a manner which is not detrimental, nor adverse to the interest or prerogatives of any water user or interest in either State.

On behalf of the State of Nevada, I respectfully urge your favorable consideration of the legislation before you as the vehicle to resolve long-standing, continuing and potentially extended conflicts relating to the limited water supplies of the Truckee, Carson and Walker Rivers and Lake Tahoe.

Senator ANDREWS. In the August 20, 1985, draft of S. 1558, a new section 204 has been proposed that would provide that nothing contained in title II of the bill could be construed to prevent the implementation of agreements that are entered into pursuant to title I of the bill.

Section 204 further provides that the provisions of the compact are to be construed in a manner that is consistent with the purposes of title I.

What is the State's position with regard to the proposed amendment?

Governor BRYAN. Senator, if I might respond recalling that once upon a time I did practice law, although I do not appear before you in that capacity now. I would be reluctant to——

Senator ANDREWS. Well, I have an advantage, I never practiced law. I am between an attorney general and another attorney up here, and my degree is in agronomy, Governor, and sometimes I think there are too many attorneys around. But every now and then we want to ask you for a little advice.

Governor BRYAN. That has certainly been true, I think, perhaps with good cause. Let me respond, Senator, by indicating that in our judgment, as emphasized by Congressman Reid who preceded me, the importance of the compact, the negotiations that took more than a decade to consummate in terms of the agreement, and which have been in this State since 1971, cannot in anyway be diminished, compromised, or altered, in my judgment, without jeopardizing the prospect of the totality of settlement which is essentially the purpose of this legislation.

So, any answer that I would give you would have to have that important qualification. That in our judgment, the compact is an integral part and an indispensable settlement. Any other provision in this legislation which would seek to supercede it or to modify it in any substantive way could only undermine the ultimate settlement.

So, without having had the opportunity to read and carefully study it as I know you and your committee have, I would be very reluctant to indicate that title I, which contains essentially the settlement provisions, anything contained in there that would jeopardize the spirit and meaning of that compact could cause this whole process to unravel.

Senator ANDREWS. Governor, let me state it another way. Do you feel that that proposed amendment might so alter the terms of the original compact, that if it were agreed to the compact would have to be submitted again for ratification by the Nevada Legislature?

Governor BRYAN. It is entirely possible. Again, without having had the benefit to reflect upon that and to study it as carefully as I am sure your legal staff advising you and the committee have done, I can't make that unqualified statement. But that would certainly be my concern. That if the amendment in any way suggested any change of substance to the compact, it seems to me it would be an inescapable conclusion that the compact itself would have to be renegotiated. And as you well know, that process would involve the ratification of both the States of California and Nevada.

In our situation, perhaps it can be compared to the State of North Dakota. We have a biannual legislative session, which would mean the earliest opportunity the Nevada Legislature could consider that would be in 1987, barring a special session of the legislature, which, as you know, Governors are reluctant to call unless there are dire circumstances of emergency that we have no other alternative.

Senator ANDREWS. Well, Governor, as you know, the record of this hearing will be open for at least a couple of weeks. And these hearings are best when they are as complete as they possibly can be. We would appreciate it very much if you could have the appropriate State official in Nevada take a look at this amendment, and/or other amendments that might be submitted by the administration, and then advise us as to whether or not Nevada law would require that the compact be resubmitted to the legislature.

Governor BRYAN. Senator, I would be happy to respond to that, and I would not want to leave you or your colleagues with the impression that we are absolutely intransigent with respect to any changes in the proposed legislation. The caveat that I am trying to sound is that anything that would jeopardize or damage the provisions of the compact itself, it seems to me, is the danger area. There may be some adjustments certainly that could be made in title I, but the particular amendments that your propose I would like to have the opportunity to refer to the attorney general and his special deputies assigned to this case and to get their evaluations to what the impact of that would be as it relates to the compact provisions in title II.

Senator **ANDREWS**. And we know that the State is not going to take this lightly because there is no way that you can come out ahead by being intransigent. But on the other hand, it is of great benefit to the committee to know the parameters of the laws of the State of Nevada in considering proposed amendments to the compact.

Governor, the Pyramid Lake Tribe has indicated its opposition to the bill, unless amended to provide that the State of Nevada would relinquish its claim to the bed and banks of the Pyramid Lake, as well as its claim to the bed and banks of that portion of the Truckee River that lies within the exterior boundaries of the tribe's reservation.

Could you give us the State's position on this proposed amendment?

Governor **BRYAN**. Mr. Chairman and members of the committee, I think that issue has been rendered moot as a result of the decision by a U.S. District Court, affirmed by the Ninth Circuit Court of Appeals, and on which the Supreme Court of the United States denied certiorari.

In effect, for a number of years there had been some uncertainty as to where legal title to the lake bed was vested. And that issue was presented to the court, the court made a determination that the United States had not waived its sovereign immunity, and therefore the State was incapable of making that claim.

I think that the assurance that this committee has, as you know, the Congress determines under what circumstances the Federal Government or its instrumentalities waive sovereign immunity. Unless the Congress of the United States, acting through the good graces of this committee and its colleagues, should make a change in the law, that issue has been rendered moot. The court has simply indicated that that issue cannot be raised by the State of Nevada. And I know of no effort at this time to resurrect that issue in the courts.

Senator **ANDREWS**. Governor, based on the opposition of past White House administrations to the proposed compact there have been several proposals to delete title II of the bill.

If title II were to be introduced as separate legislation, what would the State's position be with regard to the State's proposed $8 million contribution to the title I settlement fund?

Governor **BRYAN**. Senator, I know that you and your colleagues understand the language of your constituents. In a couple of words, that is a deal breaker. I mean, without the provisions of title II, the State's $8 million would not be forthcoming. We view title II as an integral, absolute, and essential part of this overall settlement. And the $8 million which the State legislature authorized in 1983 specifically requires the department of natural resources and conservation, through its director, Mr. Roland Westergard, who is here in the room and will be offering specific testimony, and myself as Governor, to make the ultimate determination. But there is no question in my mind that that is predicated upon the inclusion of title II, the compact's ratification.

Senator ANDREWS. Governor, of course one question's answer leads to another question—are there any other qualifications placed on the availability of the State's $8 million?

Governor BRYAN. As a lawyer I would never want to say "Never." I would like to leave a little room on that if I may, Mr. Chairman. The thrust of the legislation is to participate in the spirit of compromise with the Federal Government in terms of the settlement. The concern that was raised, I think in your question to Senator Laxalt, Mr. Chairman, as the leadoff witness, was whether the State was prepared to make a financial contribution. We are, in the amount of $8 million.

But the State, for more than a decade, has been awaiting the ratification of negotiations that preceded that by more than another decade. In terms of the California-Nevada Interstate Compact, the discussions that led up to the compact itself before it was submitted to the respective legislatures, that is, without question, absolutely an essential provision of the agreement.

I would think that certainly another part of that understanding is the resolution of the litigation insofar as humanly possible. I mean, this is presented as a settlement that addresses all of the controversy and litigation that has been generated for more than three-quarters of a century. So, I would think that if any part of a present legal controversy was not resolved, that we would have to give very careful consideration as to whether or not the State's $8 million participation was forthcoming.

It was intended as a total resolution and settlement, and I know that is the spirit that you and your committee, Mr. Chairman, approach this on. But anytime that you are beginning to take portions out of the settlement, that, too, it seems to me, would cause us to reconsider whether the $8 million would be forthcoming.

Senator ANDREWS. Thank you very much, Governor. Let me point out, as I mentioned before, that by tradition we put the congressional delegation and the Governor as the first witnesses. Sometimes I think we should have them be the last witnesses so that we can then ask them the questions that the preceding witnesses have raised.

So, we would appreciate it very much if we could get back in touch with you and submit some written questions to you that may be brought up by further testimony today.

Governor BRYAN. Mr. Chairman, let me assure you that the State of Nevada and all of its agencies look forward to working with you, members of your committee, and your staff in terms of responding to any inquiries that you have, and be assured that those inquiries will be prompt and forthcoming in terms of answers as quickly as we possibly can do so, because we are interested, as I know you and your members of the committee are, in getting this issue resolved.

And I think those of us who are privileged to occupy center stage in this drama recognize that we have a window of opportunity here. And like you, we are anxious to seize upon that opportunity, so you will have our complete cooperation.

Senator ANDREWS. Well, as a matter of fact, Governor, it will not extend the time. As a matter of fact, it might well shorten the time because the worst thing in the world in legislation like this is to take it to the floor with some unanswered questions out there, and then all of a sudden bang, they crop up. So, by getting as complete a record as we possible can, it will help us to make sure that whatever package we take to the floor is as well put together as it possibly can be.

Governor **Bryan**. If this legislation could enjoy the shortest gestation period in the history of Congress, we would rejoice and celebrate with the members of the committee who played such a key role in seeing that that was accomplished.

Senator **Andrews**. Well, we are going to try and do that. We even did it over in the House one time when they had a group of experts on the farm bill making long speeches. So, one of our farmer colleagues suggested that we could maximize the production of beef by cutting the gestation period of a cow to 4½ months, and that would help the consumers of America.

And we introduced it as an amendment, and our city colleagues said vote, vote, great idea. So, we have that to look forward to.

Senator Gorton.

Senator **Gorton**. Dick, I've taken the committee staff memo of this bill and added up a column of figures—and you can correct me if my arithmetic is wrong—but I come up to a request for $32.5 million from the Federal Government, plus a contingent of an unlimited in time additional amount of up to $7 million a year.

Now, balanced on the other side of the equation by $8 million from the State of Nevada, and as far as I can see nothing from the beneficiaries of settling this question, the users of the diverted water.

I suppose my question to you is first, is my arithmetic correct? And second, why should that kind of settlement particularly appeal to Senators from States other than Nevada or California as an equal sharing of the burdens of ending this set of disputes?

Governor **Bryan**. Senator, I can't indicate that your arithmetic is correct, because the figures that I had before me was $31 million as far as the Federal share. Now, you may be correct.

Senator **Gorton**. Well, the other $1.5 million is dropping a Federal claim.

Governor **Bryan**. Oh, all right. Than that is correct. That is my understanding of the arithmetic then. Well, obviously the citizens of the State of Nevada are also citizens of the United States. And in terms of the relative or proportional shares of contribution, a State that enjoys a population of less than $1 million, which contributes $8 million in terms of the total population of the United States—which now exceeds $230 million—it seems to me that one can argue that the State of Nevada is paying a disproportionate contribution. I will not place that at issue, but it is certainly a thing that speaks to the issue.

Senator **Gorton**. That is a creative answer, all right.

Governor **Bryan**. But, I think, it is reasonable and fair. And I think you, Senator, know the history of the settlement of claims involving tribal interests nationally. If one compares the amount of money that we are talking about in this particular settlement, insofar as the contribution of the United States, it seems to me that this contribution by comparison—and I am talking about the contribution by the Federal Government—is modest indeed.

It seems to me to resolve something that has affected a region of the West for many, many, many years. That if we have the opportunity to do so, with the dollar figures that we are talking about, it seems to me it is in the best interest of all the parties.

I wouldn't begin to know what the exact cost would be to the Department of the Interior and other Federal agencies who have participated in the litigation that has persisted for three-quarters of a century, but if one could quantify that in terms of hours and time spent by Federal agencies, the $32 million would probably be cheap by comparison because we have, in effect, supported three generations of lawyers and their successors in terms of the litigation costs that are involved, and seemingly have no end in prospect unless we are able to get an agreement on this type of litigation.

So, I think, it would be in the best interest from a lawyer's point of view representing a public agency to see if we can't resolve this without getting involved in more expense.

Senator **GORTON**. That does lead to another question, which arises out of a very troubling note here that this doesn't terminate all of the litigation. Again, what litigation or potential litigation will continue, and why should we be at all interested in making a contribution of this sort if we aren't going to have litigation, and almost inevitably will be faced with additional demands for additional amounts of money—amounts unspecified—to end the litigation in the future?

Wouldn't we be better to tell you that we will be happy to help you with this when we are guaranteed that the conflicts are over in their entirety?

Governor **BRYAN**. I suppose with the creativity and the ingenuity and imagination of our colleagues that practice before the bench, Senator, that probably no legislation crafted could ever preclude that possibility. As creative as you and the members of this committee are, and as able as your staff is, I doubt very seriously if it would be possible to predict with absolute, categorical certainty that no one would ever file a lawsuit following the enactment of this piece of legislation.

My experience as attorney general, and I am sure yours as well in the State of Washington, when you think that you have forever precluded any possibility of a claim, even given the best of faith, it does not always assure you that that will happen.

Senator **GORTON**. The standing, existing are not taken care of by this——

Governor **BRYAN**. My understanding is that the existing claims are. Now, I would defer certainly to those that have participated more intimately than I have, Senator. But the essence is that the existing claims are. That is one of the premises of the bill, that we resolve this litigation which has, in one form or another, been with us for three-quarters of a century.

Senator **GORTON**. I am told that there are three outstanding water quality suits that would not be resolved by this legislation.

Governor **BRYAN**. Senator, rather than give you conjecture as opposed to a definitive answer, let me ask you to give me an opportunity to respond by way of a written response. Mr. Westergard, who has been involved in this from the State's point of view, as the director of the department of natural resources and conservation in Nevada, may be able to give you a definitive answer.

We have special deputies attorney general who have represented the State of Nevada for many years who also might be able to give you that answer. Those parties are present in the committee hearing chamber today.

Senator **Gorton**. Thank you, Mr. Chairman.

Senator **Andrews**. Thank you, Senator. Senator Burdick.

Senator **Burdick**. Thank you, Mr. Chairman. Welcome to the committee, Governor.

Governor **Bryan**. Thank you, Senator.

Senator **Burdick**. I have glanced through some of these statements while we have been here this morning, and I find this statement of Elvin Willie, Jr., chairman of the Walker River Paiute Tribe. And on page 2 of his statement he says as follows, "Neither the tribe nor the Bureau of Indian Affairs played a role in drafting the compact."

Is that correct?

Governor **Bryan**. The Bureau of Indian Affairs is an agency, as you well know, Senator, within the Department of the Interior. The Federal Government was present, actively participated, and took a leading role. So, my response would be that the Federal agencies were represented, and the person of those negotiators who appeared during the negotiation phase—I cannot give you their names, but others who were present can.

Senator **Burdick**. In other words, you are telling me that the Bureau of Indian Affairs had a representative there at the time of the negotiations.

Governor **Bryan**. I cannot indicate to you specifically whether there was a Bureau of Indian Affairs person. I am indicating that as an agency within the Department of the Interior, one would hope that the Department of the Interior, as an agency of the Federal Government, would speak in terms of a position that the Department is taking with a single voice. And there will be testimony from the Department, as I understand it, that follows me, which can respond more directly to their position.

But certainly the Federal Government was very much present and involved, Senator, and did agree to the provisions that are before you.

Senator **Burdick**. I am interested in the Bureau of Indian Affairs.

Governor **Bryan**. I can't specifically answer who the Federal representatives were at the proceeding.

Mr. Westergard, I am sure, could answer that, and perhaps Mr. Broadbent who is here in the room.

Senator **Burdick**. Was there a member of the tribe there at this time?

Governor **Bryan**. I would have to defer to the representatives who were there in attendance, Senator. I was not, and cannot make an assurance one way or another on that.

Senator **Burdick**. Then the statement goes on and says, "As a result, the compact drastically limits the tribe's ability to obtain the water supply needed to develop its reservation." I would think that if there was a question of the adequacy of the water, that the tribe or the Bureau of Indian Affairs couldn't have been present.

Governor **Bryan**. Senator, my understanding of the compact, the compact's primary purpose is to divide the waters between the two States: the States of California and Nevada. As the chairman observed at the beginning of this hearing, when he made a statement, the headwaters of the Truckee, Carson, and Walker Rivers rise in California and they empty into the basins of Nevada. Hence, the nexus between the two States and the requirement to allocate those systems requiring a compact or an agreement between the two States, which obviously requires the ratification of the Congress.

It does not seek to resolve individual water claims within the two States, as between various competing parties in interest who have the priorities. That is a matter of State water law and would be subject to the prior appropriation and the date of the application, the availability of water in a particular basin, at least under Nevada law as determined by the State engineer's office.

So the thrust of this is to divide the waters between California and Nevada, as opposed to making the intrastate allocations.

Senator **Burdick**. So what you're saying to me, Governor, is that—to use a legal phrase—the tribe or the Bureau of Indian Affairs were not necessary parties, is that correct?

Governor **Bryan**. I don't believe they were in the sense that the Federal Government can choose who it wishes to represent its interest, and it was present, and represented those interests. The State of Nevada was an indispensable party, and it was present. The State of California was present and certainly the Pyramid Lake Tribe was present, and other parties were involved. I do not know all of the parties that were present, but we can certainly provide that information. It is certainly not an attempt on my part to withhold information from this committee. But as you can understand, Senator, I was not physically present during the negotiations, and cannot tell you who was sitting at the table.

Senator **Burdick**. I understand you have some other duties. But as far as the record stands right now, you can't say that a member of the Paiute Tribe was present at these hearings, and you can't say whether the Bureau of Indian Affairs was present.

Governor **Bryan**. I can certainly say the Pyramid Lake Paiute Tribe was there, very definitely, through counsel.

Senator **Burdick**. Pardon?

Governor **Bryan**. The Paiute Tribe was certainly there through counsel. I know that to be a fact. I mean, from what I have been briefed in—but your question I think, Senator, arose about the Walker Tribe.

Senator **Burdick**. That is correct.

Governor **Bryan**. And that I don't know the answer to. But there are certainly in this room that can answer that for you, sir.

Senator **Burdick**. Thank you, Mr. Chairman. Thank you, Governor.

Senator **Andrews**. Thank you very much, Senator. Thank you, Governor, for your excellent testimony. Our next witness is the Honorable Robert M. Broadbent, the Assistant Secretary for Water and Science of the U.S. Department of the Interior in Washington here. Bob, good to have you here.

Mr. **Broadbent**. Thank you very much, Mr. Chairman and Senator Burdick. It is my pleasure to be able to present the position of the administration on S. 1558. I have a rather lengthy statement that I would like to submit for the record, and then only take a couple of minutes, and really leave the rest of time open for questions——

Senator **Andrews**. We appreciate that.

Mr. **Broadbent** [continuing]. Which I think might be more productive.

Senator **Andrews**. Let me assure you that your entire statement will be in the record as though you uttered every word. Senator Burdick and I have a problem. Our Governor is in town and we are meeting on a water project that you are very familiar with.

Mr. **Broadbent**. Yes.

Senator **Burdick**. Maybe the witness could tell us something about our water project.

Senator **Andrews**. Well, I don't really want to get into that right here, Senator, but we will down the line as we have often in the past.

Mr. **Broadbent**. I hope the chairman and Senator Burdick know my position on that.

Senator **Andrews**. We do, and we appreciate your support.

STATEMENT OF ROBERT M. BROADBENT, ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Mr. **Broadbent**. Mr. Chairman, maybe I could best use my time in saying a little bit about what has happened over the past 4 years, in talking a little bit about the settlement provisions, and just taking a couple of minutes to go over some of the history as it is perceived by the Federal Government.

As you may know, and certainly the briefing papers have indicated, this has a long, long history. The Federal Government has had a Pyramid Lake task force trying to look at a negotiated settlement that was started back in the 1960's. In the late 1970's there was a special negotiator who was sent out by the then-Secretary of the Interior to the mid-Pacific region to attempt to negotiate a settlement. And when I came in office as the head of the Bureau of Reclamation, the Secretary of the Interior asked me—probably because of my Nevada connections—to again open up, from the perspective of the Federal Government, negotiations toward a possible settlement.

The cost to the Federal Government of the disputes on the Carson, Truckee, and Walker Rivers has been millions of dollars over the years in litigation, support fees, and all the rest of it, as we have tried to reach a compromise or litigated settlement on the use of the waters of these three rivers.

I would like to compliment the parties that have negotiated over the past 4 years. There is a long history of animosity and differences between these parties as a result of the litigation and certainly what has gone on over the years. Their willingness to sit down at a table, forget those differences, and try to reach a negotiated settlement, in my mind, indicates to the Federal Government that we ought to do the best we can to reach a settlement of this issue. And for that reason, the Federal Government supports S. 1558 with some suggested changes—and we do so wholeheartedly.

We recognize that as a result of the testimony today, there are going to be some questions and some indications that there ought to be some suggested changes in that legislation, and certainly we will cooperate with the committee and the committee staff in any way possible to try to reach a conclusion which would allow you to move the bill and to settle this longstanding dispute.

When we went into the settlement procedures, we felt that there were four or five things that had to be settled as we talked individually to the partners. There had to be municipal and industrial water for the city of Reno. We have had to do our best to maintain a lake level for the Pyramid Lake Paiute Tribe, and that is in this bill where in previous bills it was not. We had to do what we could to enhance the opportunity for the survival of the endangered cui-ui and the threatened Lahonton cutthroat trout. And we could do that in this bill by a reservoir exchange agreement, to be negotiated; lower Truckee River restoration; improvements to Marble Bluff Dam and the fishery, improvement possibly to the hatcheries; and certain biological studies that would be necessary to determine what the fish can stand in the way of temperature, food supply, and things like that.

We also had to negotiate an operating plan for Newlands project. That, too, is part of this bill and is conditioned on a satisfactory negotiation in 12 months after this bill. I would like to indicate to the committee that the technical people are now working on a resolution of both the reservoir exchange agreement and the operating plan.

It also is based on the dismissal of the lawsuits. Now, when we first entered into this—and Senator Gorton is right, we do not have a resolution of the water quality suits—we looked at that extensively and felt that we just could not move the water quality suits at this time. They involve another Federal agency, EPA, and they involve a different set of laws and different committees. There did not appear to be any way that we could move this legislation and resolve the water quality issues. We took it up at some length. In fact, we had a resolution of the water quality suits in some of our legislation.

I would like to indicate to you that it is my understanding that the people who are interested in the water quality issue, primarily the Washoe County people and the tribe, have had meetings. There is an indication that they are willing to sit down and try to resolve that issue without taking it any further in court. And that would certainly, I think, be to the best interests of everybody.

There is the issue of the contribution by the Federal Government and the contribution by the State government. I would guess that we sort of patterned our contribution on some of the other settlements that have gone on recently, added a little bit more to it, and felt that the percentage that was asked for from the State of Nevada met the general requirements of other negotiated settlements. I think we can furnish those figures. I think the administration feels comfortable with that. Clearly the administration would like it all paid for by somebody else, but I think we also recognize that we have a definite Federal interest in maintaining as near as possible the endangered fishery and in our trust responsibilities to the Pyramid Lake Tribe. And as such, the settlement or the cost by the United States, I think, is within what we would feel would be legitimate expenditures of Federal money.

Also we attempted in this to help out TCID and Newlands project, whose litigation expenses over the past number of years have taken our hard-working farmers and all but put them out of business trying to litigate. They have had no support in their litigation except maybe the joining of the State of Nevada in some of the litigation. It has taken them just about to the point of insolvency. And we felt that writing off their $1.5 million remaining debt would help them to maintain a viable farming operation, one of the only farming operations in the State of Nevada. So, the Federal Government again supported that.

We would be happy to answer any questions. We would be happy to work with the committee and would look forward to the opportunity to work with you as we attempt to move this legislation.

Thank you very much, Mr. Chairman.

Senator **Andrews**. Thank you very much, Mr. Secretary.

[Mr. Broadbent's prepared statement, on behalf of the Department of the Interior, follows. Testimony resumes on p. 137.]

Statement of Robert N. Broadbent
Assistant Secretary for Water and Science
Accompanied by Eugene Hester, Associate Director, Fish and Wildlife Service
Witnesses for the Department of the Interior before the
Senate Select Committee on Indian Affairs
on S. 1558
October 2, 1985

Mr. Chairman and Members of the Committee, it is a distinct pleasure to be here today to offer the Administration's views on the proposed Truckee River-Pyramid Lake settlement legislation which has been introduced by the Nevada delegation. We believe that this legislation offers an opportunity fairly and responsibly to settle the many serious water related disputes that have plagued northern Nevada for over seventy years. We urge prompt passage of this legislation by the Congress, including some modifications of a clarifying and limiting nature as discussed below.

The legislation which you have before you today represents the results of over five years of intense effort to settle one of the longest standing and perhaps the most contentious Indian water rights dispute in the western United States. Beginning in early 1981, the Department, at the specific urging of Senator Laxalt, has labored to bring all the various parties together to produce a settlement of these issues. The parties to these negotiations have included:

Pyramid Lake Paiute Tribe
Truckee-Carson Irrigation District
Sierra Pacific Power Company
Carson-Truckee Water Conservancy District
Cities of Reno and Sparks
Washoe County Water Conservation District
States of Nevada and California
Department of the Interior

I wish to take this opportunity to commend all these parties for their willingness to set aside their differences and to fashion a settlement in a spirit of compromise and fairness. We feel that this settlement will provide the mechanisms necessary to secure much needed municipal and industrial water for the Cities of Reno and Sparks, and Washoe County, Nevada, as well as parts of California, without which fierce competition for water would continue unabated. The settlement also provides, we think, viable mechanisms to work toward the goal of ensuring the survival of the Lahontan Cutthroat Trout and the cui-ui. The reservoir exchange agreement on the Truckee River has the potential to provide more water with better timing than the current use of Stampede Reservoir exclusively for the fishery. The restoration of the Lower Truckee River, which will include replacing some historic meanders and the tree canopy which historically shaded a good portion of the river and maintained lower water temperatures, will be a significant benefit for fish spawning. The improvements to Marble Bluff Dam and Fishway will have a major impact in aiding the ability of the fish to swim up the Truckee River for spawning. The improvements and additions to hatchery facilities will provide a needed backup to natural spawning. The biological studies are essential to determine the flow and water quality requirements of the fishes.

The development of workable and reasonable operating criteria for the Newlands Project will provide a dependable bench mark to determine Truckee River diversions. This information is essential to determine the amounts of water available to the fishery.

The dismissal of pending lawsuits following enactment of the bill would free up monies that can be better utilized in the maintenance and upgrading of existing facilities outside the Reservation. On the Reservation, monies previously used for litigation could be used for the economic development of the Tribe. The United States would also save substantial litigation costs. Finally, the long-awaited ratification of the California-Nevada Interstate Compact would have many subsidiary benefits for both States. The present state of uncertainty prevents long-term planning for the rational use of a severely limited but absolutely essential natural resource, namely water.

Department Concerns

We strongly support enactment of legislation. Additional concerns have come to light upon broader Administration review. We and the Department of Justice would be pleased to work with the Committee to address the following technical concerns.

1. The obligation of the Secretary to deliver water in section 104 should be clarified by deleting "only" on page 7, line 2 to make clear that failure to meet the following listed two criteria are the sole basis for assessment of damages under section 110.

2. Limitation on damages. A sentence should be added at the end of section 110(b)(2), to read:

"Provided that no damages would be paid in any year when the annual Truckee River flow at Farad is less than 75 percent of the average flow at that location." This is to limit the exposure of the Federal Government from having to pay damages because of factors completely beyond Federal control, after all feasible steps have been taken within the terms of this settlement to furnish water.

3. Use of Payments. The first sentence in Section 110 should be revised to read:

> "Subject to the conditions provided in subsection (b), to meet the obligations in Section 104, he shall pay from funds available to the Department of the Interior Tribal Trust Fund authorized in Section 109, an amount equal to the replacement cost of such..."

The first sentence in Section 109(b) should be revised to read:

> "There shall be added to the Tribal Trust Fund any amounts credited to the fund under Sections 108(f) and 110. Until such time as the Lahontan Cutthroat Trout and the cui-ui shall no longer be listed as having been designated as either a threatened species or an endangered species, any monies credited to the Tribal Trust Fund pursuant to Sections 108(f) and 110 and any income earned thereon shall be expended only for the purpose of enhancing..."

4. Section 108(f) of the bill does not properly recognize that the obligation of funds within five years is contingent on annual congressional appropriations rather than the discretion of the Secretary.

5. Section 109(d) would provide that amounts appropriated to the Treasury for deposit in the "Pyramid Lake Paiute Tribe Trust Fund" would earn interest from the date of enactment of the bill. We note that until monies are appropriated by the Congress, there is nothing on which to earn interest, and recommend that the bill be amended to provide for interest beginning on the effective date of the Act.

6. Section 110(a) would direct the Secretary to pay such amounts up to $7 million for any failure to meet his obligations to make certain water deli-

veries for the Tribe. However, there is no authorization of appropriations in the bill for the Secretary to pay such amounts.

7. While we believe that the legislation is clear about the State and Federal funding ($29 million) for the Settlement Fund, we would like to emphasize that the Administration views the $29 million program as a funding cap and that additional appropriations are not required nor to be deemed necessary to fulfill the Secretary's obligations under this legislation. It may be desirable to amend the bill's language to remove ambiguity on this point.

8. We note that the Truckee-Carson Irrigation District under the proposed legislation would be exempted from the requirements of the Reclamation Reform Act of 1982. Though this would be the second or third irrigation district exempted from compliance with Reclamation law, we are concerned about the additional precedent of continuing to grant these

exemptions. (It should be noted, however, we are not aware that any landowner within the Truckee-Carson Irrigation District is not in compliance with acreage limitation provisions of the RRA.)

9. Under Section 107(a)(10) and (11), the operating criteria for the Newlands Project and the Stampede reservoir operating criteria are subject to agreements agreed to by the Secretary of the Interior. We wish to emphasize that no additional Federal financial obligations are contemplated in connection with these agreements, and that no funding should be authorized for that purpose. The maximum Federal contribution to this settlement is already included in this bill.

10. We believe that clarifying language should be added to the bill to ensure that the provisions of Title II are construed in harmony with Title I. We would be pleased to work with the Committee to develop appropriate amendatory language.

11. Finally, we note that some concerns have been raised about the interpretation or application of provisions of this bill to the rights or interests of Indian tribes. We would be pleased to work with the Committee to address these concerns.

Background

The Truckee, Carson and Walker River systems run generally parallel to each other in an easterly direction commencing in the Sierra Nevadas in California and terminating within closed basins in Nevada. The Truckee and Walker rivers flow into Pyramid and Walker lakes, two desert lakes of considerable beauty and deep significance to the Pyramid Lake Paiute and the Walker River Paiute Indian Tribes. The Carson River flows into the Stillwater Wildlife Management Area, an important waterfowl area on the Pacific flyway, and then into the Carson Sink, a large shallow area that fills with water during wet periods, and dries completely during droughts. The Sierra Nevadas accumulate a widely variable snowpack that results in extended wet and dry periods that can last up to 20 years. Lake Tahoe, a large, deep and beautiful Alpine lake, is located on the upper reaches of the Truckee River.

Numerous and growing demands on the water in these three river systems create a situation of intense competition for a limited water supply.

Newlands Project. The Newlands Project was one of the first five projects built by the Bureau of Reclamation. Derby Dam, located on the Truckee River, was constructed in 1905 and diverts Truckee River water into the

Truckee Canal and then to Lahontan Reservoir on the Carson River. Water is released from the Truckee Canal and Lahontan Reservoir to irrigate up to 73,000 acres of Newlands Project land in the Truckee Carson Irrigation District (TCID). The majority of the return flows from these lands go to the Stillwater Wildlife Management Area and to the Carson Lake pasture. The two main storage facilities for the Newlands Project are Lake Tahoe and Lahontan Reservoir. A small dam on the Truckee River outlet to Lake Tahoe controls the top 6 feet of the Lake, which regulates about 732,000 acre-feet of water. This storage provides essential water during drought periods to the Newlands Project as well as to other water users on the Truckee River. Lahontan Reservoir has a storage capacity of 317,000 acre-feet.

Truckee Storage Project.The Truckee Storage Project consists of Boca Dam on the Little Truckee River, which was completed in 1939. This storage facility (capacity 40,000 acre-feet) provides supplemental water to private irrigators in the Truckee Meadow area and Reno and Sparks, Nevada.

The Washoe Project.The Washoe Project consists of Stampede Reservoir (completed in 1970) on the Little Truckee, Prosser Creek Reservoir (completed in 1962) on Prosser Creek, and Marble Bluff Dam and Fishway (completed in 1975) on the Truckee River near Pyramid Lake. The Watasheamu Dam authorized for construction on the East Fork Carson River has never been built because it has not proven to be economically feasible. The original purposes for the Washoe Project were to provide supplemental water for irrigation, municipal and industrial uses, fish enhancement, recreation, power, and flood control. In the early 1970's, the Secretary of the Interior elected to use Stampede Reservoir (225,000 acre-feet capacity) exclusively for the benefit of the listed Pyramid Lake fish species, the endangered cui-ui and the threatened Lahontan Cutthroat Trout, until such time as these fish are no longer on the endangered and threatened lists. The Ninth Circuit Court of Appeals has upheld the Secretary's right to exercise his discretion in this manner. This has precluded the use of Stampede Reservoir for the provision of municipal and industrial (M&I) water to the cities of Reno and Sparks, Washoe County, Nevada; and to certain parts of California as contemplated in the Washoe Project Act.

Other Facilities. In addition to the Federal Reclamation projects already discussed, there are a number of private structures and facilities on the

Truckee and Carson Rivers. Principal features include several diversion structures on the Truckee River for irrigation in the Truckee Meadows, diversion structures on the Lower Truckee River for irrigation on the Pyramid Lake Indian Reservation, Storage and diversion structures on the Upper Carson River for irrigation in the Carson Valley, two storage facilities on the Truckee River in California (Independence and Donner Lakes), and 4 hydropower plants on the Truckee River.

Pyramid Lake. The net result of the construction of these various projects has been a major reduction in the inflow of water to Pyramid Lake. Because the lake is the terminus of the Truckee River, that reduction created a situation in which the outflow (evaporation from the surface area of the lake) greatly exceeded the inflow. In 1867, the earliest recorded lake elevation was 3,875.9 feet above mean sea level. In 1967, the lake reached its lowest elevation at 3783.9 feet.

The surface area of the lake receded from 144,000 acres to 107,000 acres during the same time period. Because of the reduced surface area, a new equilibrium has resulted where inflow and outflow (evaporation) appear to be more or less equal. From 1966 to 1981 the lake level remained relatively constant (3,787 feet to 3,789 feet, respectively). Since 1981, the level of the lake has risen 24 feet to its present elevation of 3,811 feet, mainly due to high runoff years.

Lake Winnemucca, a companion lake that historically received over flow from Pyramid Lake during wet years, had a surface area of about 70,000 acres, and has since become totally dry. That lake has not been revived by the recent period of wet years.

Another major reason for Pyramid Lake elevation levels remaining constant or rising in recent years is the operating criteria and procedures (OCAP) have been in place for the Newlands Project which the Secretary of the Interior has implemented along with the Truckee Carson Irrigation District. These OCAP have significantly reduced Newlands Project diversions from the Truckee River. I will be discussing these operating criteria in more detail later in my testimony.

Pyramid Lake Fish Species. The reduced inflow and drop in Pyramid Lake levels has had a severe impact on the endangered cui-ui (chasmistes cujus), a unique sucker fish found only in Pyramid Lake, and the threatened Lahontan Cutthroat Trout (salmo clarki henshawi), a large species of trout, found in several lakes and rivers in west-central Nevada and east-central California. Both species live in Pyramid Lake, are river spawners, and require cool water temperatures for successful reproduction. Diminished river flows and consequent elevated river temperatures have severely limited the spawning success of the two species. Additionally, as Pyramid Lake levels declined, a delta was formed at the Truckee River inlet to the lake which produced a barrier to the upstream migration. Although Marble Bluff Dam and Fishway were built to alleviate this latter problem, they have been only partially successful.

The Lahontan Cutthroat Trout endemic to Pyramid Lake became extinct in the 1940's. The strain of trout presently found in the lake is a hybrid produced from populations in neighboring lakes and closely resembles the original strain. The population is maintained through hatchery production. The cui-ui, a long-lived fish (up to 40 years), only needs to have successful spawns occasionally, and because of this, has managed to continue to exist. Unfortunately, only one significant year class of cui-ui, produced in 1969, is actively spawning. In every year since 1980, except 1981, there have been cui-ui spawning runs, but the number of fish produced is not yet known. Individuals do not enter the reproductive population until they are 6 or 7 years old, and, therefore, have not begun swimming up the river where they can be counted.

Newlands Project Operating Criteria and Procedures (OCAP). At the request of the Pyramid Lake Paiute Tribe, an interagency task force was formed by the Secretary of the Interior in the 1960's to develop operating criteria to limit the diversions to the Newlands Project to only those amounts of water necessary to meet water delivery requirements. This resulted in what has become known as the 1967 OCAP.

The Pyramid Lake Paiute Tribe was dissatisfied with those OCAP and filed suit in the Federal District Court in Washington, D.C. That lawsuit resulted in a set of Court ordered operating criteria which were much more restrictive than those developed by the task force. These criteria are known as the 1973 OCAP.

The Truckee-Carson Irrigation District (TCID) that operates the Newlands Project for the United States, refused to implement the 1973 OCAP when directed to do so by the Bureau of Reclamation. TCID claimed that the highly restrictive OCAP would have a devastating effect on project water users. The United States then cancelled its 1926 operating and repayment contract with TCID. This resulted in another lawsuit District vs. The Secretary), in which TCID claimed that its contract could not be legally cancelled.

In December of 1983, the Secretary's authority to cancel the contract was affirmed by the Ninth Circuit Court of Appeals after being first upheld by the Federal District Court in Reno, Nevada. The U.S. Supreme Court refused to hear the case.

The Secretary's authority to implement the 1973 OCAP has been upheld, but certain other court decisions that have been made since 1973 make it necessary to update those criteria. Since December 1983, the Bureau of Reclamation has been laboring to produce OCAP which conforms to the valid requirements of the 1973 decision and incorporates other legal limitations. An Environmental Impact Statement is being written to support the development of the OCAP.

Concurrent with the development of operating criteria, an intensive effort has been underway to reach a negotiated settlement on the Truckee River which would resolve all disputes and terminate the lawsuits. The legislation before the Committee today provides for a 12-month period to allow for the development of OCAP upon which all parties (TCID, the Tribe, the State of Nevada and the Secretary) can agree.

Other Litigation

What follows is a list of the various lawsuits that have grown out of the numerous water use conflicts in the Truckee-Carson River Basin. The first ten are background lawsuits that relate to water rights and usage; the last six are those lawsuits that will be dismissed as a part of the settlement.

A. Background Lawsuits

1. 1915 Decree -U.S. v. Truckee River General Electric Company (now Sierra Pacific Power Co.)

The decree terminated an attempt by the U.S. to condemn land owned by the Sierra Pacific Power Company on the Lake Tahoe lake front on either side of the Truckee River. The condemnation was undertaken to gain the use of Lake Tahoe as a natural storage reservoir for Lake Tahoe Dam, part of the Newlands Project. Instead, the Court granted the U.S. an easement on a 14-acre tract for a payment of $139,000. The decree states that the Government must operate Lake Tahoe dam at Floriston Rates: 500 cubic feet per second (cfs) March 1 - September 30 and 400 cfs October 1 - February 28,29

2. U.S. v. TRGEC, 1961 - Modification of 1915 Decree of the same name - incorporated a Prosser Creek Reservoir agreement for the exchange of waters between Prosser Creek Reservoir and Lake Tahoe.

3. Sept. 8, 1944, Truckee River Decree or U.S. v. Orr Water Ditch Co. (filed March 30, 1913). The U.S. sought and achieved adjudication of water rights of water users on Truckee River in Nevada. The decreed water rights include a right for the Pyramid Lake Indian Reservation for irrigation of 5,875 acres of lands with a priority date of December 8, 1859, and a right for the United States with a priority date of July 2, 1902, for diversions of water through the Truckee Canal to the Newlands Project.

4. October 24, 1958, Sierra Valley Decree or U.S. v. Sierra Valley Water Co. Based upon a stipulation between the U.S. and Sierra Valley Water Company, the decree granted the Sierra Valley Water Company the right

to divert a maximum of 60 cfs flow from the Little Truckee River during the irrigation season each year.

5. Anderson-Bassman Decree of Nov. 27, 1905. This suit adjudicated rights on the west fork of the Carson River between certain users in California and users in Nevada.

6. Price Decree of Dec. 10, 1921 This decree provided entitlements to use water from the west fork the of Carson River in California.

7. U.S. vs. Alpine Land and Reservoir Company, Civil No. D-183 BRT, filed May 11, 1925; final decree entered and subsequently affirmed by Ninth U.S. Circuit Court of Appeals on January 24, 1983. Through this litigation, the U.S. sought and achieved adjudication of all water rights on the Carson River.

8. TCID v. Secretary of the Interior, Civil No. R-74-34 BRT, filed March 1974 in U.S. District Court, Reno, Nevada; affirmed by the Ninth Circuit Court of Appeals; certiorari review denied by the U.S. Supreme Court. The court ruled that the Secretary had the right to terminate the 1926 operating and repayment contract with the Truckee Carson Irrigation District, and the District could not refuse to implement the operating criteria and procedures issued by the Secretary.

9. United States v. TCID, Nos. 81-2245, 81-2276, and 82-38; (Consolidated for certiorari review by the U. S. Supreme Court as State of Nevada v. U. S. October Term, 1982); appealed by the U.S. to the Ninth Circuit Court and to the U.S. Supreme Court. This case involved a claim by the United States on behalf of the Pyramid Lake Tribe asking for a reserved water right for the Tribe in order to meet the needs of the Pyramid Lake Fishery. The District Court ruled, and the U.S. Supreme Court affirmed that the Tribe could not claim a reserved right against other parties to the Orr Ditch Decree in excess of the amount decreed to the tribe in the Orr Ditch Decree, i.e., water for the irrigation of 5,875 acres of land on the Reservation.

10. Carson-Truckee Water Conservancy District v. Secretary, Civ. No. R-76-156-GJS, U.S. District Court, Reno, Nevada; certiorari denied by the U.S. Supreme Court. This suit was filed on October 1, 1976, by the Carson-Truckee Water Conservancy District, the Sierra Pacific Power Company, and the State of Nevada, alleging that the provisions of the Washoe Project Act compel the Secretary to enter into a cost reimbursement contract with the Carson-Truckee Water Conservancy District for the sale of M&I water out of Stampede Reservoir. The district court ruled and the appeals court confirmed that the Secretary acted within his discretion when he reserved the use of Stampede Reservoir water primarily for fishery purposes until such time as the fish are no longer listed under the Endangered Species Act.

B. Lawsuits Being Dismissed with Settlement

1. Pyramid Lake Paiute Tribe of Indians v. California, et al, Civ. No. S-81-378 RER, U.S. District Court for the Eastern District of California. This case is a class action suit filed by the Pyramid Lake Pauite Tribe on June 23, 1981, to adjudicate the rights of all California users on the

Truckee River that are adverse to the claims of the Pyramid Lake Tribe. At issue are the Tribe's rights to the use of waters of the Truckee River for maintenance of the Pyramid Lake and Truckee River fishery.

2. United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada. This case involves a claim by the Tribe for a water right on the Truckee River which would have a greater priority than any rights not already adjudicated in the Orr Ditch decree and confirmed in Nevada v. U.S., noted above.

3. The appeal of the Pyramid Lake Tribe in United States v. Orr Water Ditch Co., No. 85-1880, Ninth U.S. Circuit Court of Appeals. This is the Tribe's appeal of United States District Court, District of Nevada decision allowing diversions of Truckee River water to the Newlands Project by the Federal Water Master.

The Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr Water Ditch Co., Equity A 3-WEC. United States v. Alpine Land & Reservoir Co., D-183-BRT, in the United States District Court for the District of Nevada. These cases involve the granting the applications to transfer Newlands Project water rights to other Newlands Project lands. This is the Tribe's effort to prevent the transfer of water rights on the Newlands Project.

5. Pyramid Lake Paiute Tribe of Indians v. Hodel, No. R-85-197-BRT, United States District Court for the District of Nevada. The Pyramid Lake Paiute Indian Tribe brought suit challenging operating criteria issued by the Secretary of the Interior for diversion of water from the Truckee River. The Court ordered the establishment of more restrictive Operating Criteria and Procedures (OCAP) for the Newlands Project. The judge maintained continuing jurisdiction in the case and it has since been transferred to the U.S. District Court in Reno, Nevada for further consideration.

6. Truckee-Carson Irrigation District v. United States. No. 512-7 United States Claims Court. This was an action filed by TCID to recover damages from the United States, allegedly due because TCID cut back on water releases on the Newlands Project to benefit Pyramid Lake and, consequently, was required to forego winter power production.

Proposed Settlement Terms

The major points in the proposed legislation are summarized below:

1. Settles a number of outstanding lawsuits other than those relating to pollution control (Section 107).

2. Fish propagation program (Section 106) for Lahontan Cutthroat Trout and cui-ui is funded by a settlement fund (Section 108). The fish propagation program provides for flexible, cost-effective actions to improve the habitat for natural spawning. Settlement funds would be financed by a one-time $21 million appropriation and an $8 million contribution by the State of Nevada in an interest accruing trust fund account.

3. Minimum Pyramid Lake level of 3,794 feet (10-year rolling average) and 3,786 feet (2-year minimum) (Section 104). (The present lake level is approximately 3,811 feet.)

4. A "menu approach" for providing additional water to Pyramid Lake to meet lake level and fish flow criteria (Section 105). The menu is financed with the settlement fund. Included is a process for executing an operating agreement for Truckee River reservoirs.

5. Truckee River diversions criteria for TCID will be negotiated by Interior and TCID and agreed to by the State of Nevada and the Tribe.

In addition, if an operating criteria agreement is implemented, Interior would waive $1.5 million TCID repayment obligation and Reclamation Reform Act requirements. (Section 111)

6. Provides $10 million Tribal Trust Fund for economic development on the Pyramid Lake Indian Reservation (Section 109).

7. If Pyramid Lake elevation criteria are not met, damages will be paid to the Tribe by the Federal Government (Section 110). Maximum damages in any given year are $7 million.

8. Ratifies California-Nevada Compact (approved by Governors Reagan and Laxalt in 1970 and 1971)(TitleII).

Note that both the Truckee River reservoir operating agreement and the TCID operating criteria (OCAP) are subject to multi-lateral agreements. Both have time limits of 12 months for negotiating the agreements (Section 107(6)(1)); however, a 6-month extension is possible if the Secretary and the State of Nevada agree. Therefore, the whole settlement package is conditional, subject to resolution of these two issues.

Financing

The legislation as proposed has the following fiscal impacts:

- Federal contributions of $21 million to settlement fund (Section 108) and $10 million to Tribal trust fund (Section 109).
- State of Nevada contributes $8 million to settlement fund (Section 108).

- Federal Government forgives $1.5 million in debts for TCID (Section 111).

- Federal Government assumes liability (if any) for Pyramid Lake elevation damages.

Lake Level Analysis. The Bureau of Reclamation has conducted a hydrologic modeling analysis of the probabilities of violations of the Pyramid Lake elevation criteria under differing assumptions. The key analytical question is the probability of a prolonged drought and its effect on diversions from the Truckee River system and the resultant inflows into Pyramid Lake. The basic findings of the Bureau of Reclamation are:

- Based upon the historic 80-year hydrologic record, no violations of the lake level criteria (over 1901-1980) would occur, assuming some limitation on Newlands Project diversions.

- Even under the most severe drought conditions, it is not that any violations of the lake level criteria would occur prior to the year 2000.

It should be noted that damages payments are not the Secretary's only remedy to violations of the Pyramid Lake elevation criteria. In fact, the agreement is designed so that it is more cost effective for the Secretary to take actions that will put water into the lake and not pay damages. Under Section 105, the Secretary has a menu of possible measures that can be taken to decrease diversions from the Truckee River and thereby increase inflows into Pyramid Lake.

California-Nevada Interstate Water Compact

Title II of this legislation ratifies the California-Nevada Interstate Water Compact. We believe that ratification of the Compact in conjunction with passage of Title I is timely and will serve several important purposes. Ratification of the Compact will assist in the elimination of many of the sources of present and future water related controversies between the two States and permit the orderly use of the limited water supplies within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins.

The Compact is the result of over 13 years of negotiations between the States of Nevada and California under the authority of P.L. 84-353. It was approved by the two State legislatures and signed by then Governors Reagan and Laxalt in 1970 and 1971. As Members of this Committee are no doubt aware, this Compact has been before the Congress in the past and the Department unfortunately was forced to oppose its ratification because of its failure to adequately address the claims of the Pyramid Lake Paiute Tribe. The situation now is entirely different. In this instance, the Compact comes to the Congress in the context of an overall settlement of the claims associated with the Truckee River and Pyramid Lake.

The Compact ratification issue is still not without some controversy. The Walker River Paiute Tribe has voiced its opposition to the Compact's ratification on the ground that it may bar or limit the Tribe's claims to undecreed water in the Walker River Basin. We believe, however, that Article XVIII of the Compact preserves the Tribe's right to assert its claims under either Federal or State law, and that all other provisions of the Compact should be construed in harmony with that Article.

In conclusion, therefore, we urge the ratification of the California-Nevada Interstate Water Compact in the context of this comprehensive settlement.

Senator ANDREWS. Given that the Federal Government is not a party to the compact, and doesn't have voting representation on the compact commission, how would you propose to protect the Federal interests in water for the Stillwater wildlife management area, the national forest surrounding Lake Tahoe, and the Newlands project?

Mr. BROADBENT. Well, let us take them in order. The rights of the Newlands project have already been adjudicated in *Orr Ditch* and *Alpine*. They have that right. To me, there is no question about the rights. How you interpret that right in an operating plan that says you do not waste water is the issue that we have, or waste or use—use that right to the best advantage is what we have to do in an operating plan. They have an adjudicated right to their water.

On the case of the Stillwater, with the adjudication of both—of primarily the *Alpine* decree, which has gone all the way to the Supreme Court—there is no water right for Stillwater or for Carson Pasture. If there is surplus water, then certainly the State, through its allocation process, could probably grant that water right to the extent that they have surplus water.

What we have said in this legislation for Stillwater—which is a fine habitat for migratory birds, ducks primarily—that is, canvasbacks are particularly attracted to this area, and it is important for the canvasback duck—is that in any replacement and betterment we might undertake at Newlands project, that we would have to mitigate for any resulting loss of water to Stillwater.

I forgot what the other one was.

Senator ANDREWS. The other one was the national forest surrounding Lake Tahoe.

Mr. **Broadbent**. In the case of the national forest, I think it is the position of this administration that there is no reserve water right. And I think we are litigating that position right now.

Senator **Andrews**. OK. But in the absence of Federal representation on the commission, how will the Federal Government in its capacity as trustee for Indian water rights be represented?

Mr. **Broadbent**. First of all, there is nothing in that commission that says they cannot pick Indians, as I see it. They say there are three representatives, they have to be from three basins, and there is nothing in there that said the Government can not pick a representative from one of the tribes to sit on that commission. So, I think it is open.

And I would hope that the Governor would do that. I think that there are four or five tribes involved, and the nominating process is such that they could put a tribe as a representative on that commission.

I think that the Federal Government is protected because we have several interests. One is the trust responsibility to the Indians that you speak about. That can only work if we can enhance the water supply for Pyramid Lake and for flows down the Truckee River at the appropriate time. That is what title I of this bill is supposed to do. And if you look at title I, it is primarily an environmental bill to enhance the fishery.

Second, I think that the Federal Government is protected from the point of the Fish and Wildlife Service, which certainly has an interest, because we have done our best to enhance the fishery. Without this bill, I think there are serious questions whether we will be able to enhance the fishery on the Truckee River and Pyramid Lake in the near future. And if they do not survive in the near future, they are not going to survive in the long future. I think this is definitely better than what we would have.

In the case of the Stillwater, which is a wildlife refuge, I think we are doing everything we can under the laws that we have to enhance the opportunity to mitigate for any wildlife damage to Stillwater Wildlife Refuge.

Senator **Andrews**. Thanks a million, Bob. I have some other questions and I am going to have to leave, and I thought one of my other colleagues, Senator Melcher, may well have been here by now. In the interest of our friends from Nevada who have come a long way, I have caucused with myself and decided that rather than adjourn until this afternoon—because I have to go over and meet with our congressional delegation, our Governor on a project that we mentioned before—that I would have Pete Taylor, our staff director, continue to ask the questions to finish your testimony and go on with the people from Nevada until I can come back, in the absence of my coming back. And I think everybody would prefer to make the record that way than have to wait here for an extra 3 hours. Not that Washington isn't a wonderful place to be in the fall, but we understand travel problems.

So, Pete will have about four more questions for you, Bob, and then, of course, we would like to have our people work with your people to follow up on questions, just as I suggested to the Governor of Nevada, to assure that they are included in the record based on the substance of statements made subsequent to your testimony.

Mr. **Broadbent**. You bet. We will have people here all day, and of course any questions that are given to us, we will respond as fully as we can.

Senator **Andrews**. We appreciate your understanding.

Mr. **Broadbent**. Well, thank you for the time, Mr. Chairman, and we appreciate your interest.

Mr. **Taylor** [presiding]. Mr. Secretary, I will just proceed on down this list of questions. Previous administrations have opposed congressional ratification of the compact essentially on the ground that Federal interests and Indian interests in water are not adequately protected. I think that goes to the nonvoting Federal representative, and I believe you have just responded to that question.

Mr. **Broadbent**. Well, if you would like, I can expand a little bit on why the Federal Government appears to have changed its opinion, if that is——

Mr. **Taylor**. Yes; would you please——

Mr. **Broadbent**. I understand that in searching the record that two previous Secretaries have indicated that they oppose the ratification of the compact. And I think they did it for three or four reasons. And in talking with Justice over the last 3 years, we have reached some of the same conclusions.

First, there was not a decision on the allocation of water on the Truckee River or the Carson River, or the Walker River to some extent during that period. The two cases that we are interested in most in this litigation, of course, are *Alpine* and *Orr Ditch*, which were finally decided several years ago; one by the Supreme Court, and one by the Ninth Circuit Court, where certiorari was refused by the Supreme Court.

And so, we think that has quantified the water rights of the people on those two river systems—a majority of the water on those two river systems. We also have in this package title I, which to me gives the best opportunity that the endangered and threatened fish are going to have to recover. Without this legislation, there are biologists that will tell you that they think the cui-ui is lost. Now, I do not know if that is right or not, but they will all tell you—or certainly it will be seriously threatened.

As my testimony indicates, the cui-ui is a fish that lives for some 20 years. And we only know that in 1969 there was a major spawning of the cui-ui. We think there has been spawning in 1980, 1982, 1983, 1984, and perhaps 1985. But we do not know that for sure because the fish do not return to spawn until they are about 6 or 7 years old.

So, with the uncertainties there, the next few years are the critical years, as we understand it, for the cui-ui. With this legislation, we think we can move rapidly, particularly if we can modify through exchange agreements the operation of the Truckee River, to provide water at the time when it is more water than you would get under Stampede, which would allow you to take care of the spawning time—which is, as I understand it, mostly in April and May. And if we can do that, then we think that if these younger fish, the 1980 on, spawn and move back to spawn and we have the water in the system, we will go a long ways toward protecting that fish.

Now, without that, if we were to have the wrong kind of years over the next year or two, with the demands on the river, and with the adjudicated settlement of *Orr Ditch* and *Alpine*, I think there is a real question on when you might be able to save that fishery.

We think the opportunity to save that fishery is really going to be enhanced if we can move quickly and get this settlement done.

Mr. TAYLOR. Well, I might note, Mr. Secretary, as you noted, there were at least two prior Secretaries of the Interior that expressed their position here. One of them was Secretary Udall, in 1969, and another, Secretary Andrus, in 1979.

Some of the testimony that we will be hearing later today includes copies of those letters or correspondence from the two Secretaries to OMB, so that will become a part of the record.

I might just note that Secretary Andrus' position in 1979 is somewhat similar to what you just stated. One of the concerns they had was that there was ongoing litigation, and I believe they cited the *Alpine* case.

Mr. BROADBENT. Yes. There are several other pieces of litigation that have been cited that are important to the *Stampede* case, which has now gone all the way through the court system. And I cannot—but it is the record; I have it in my testimony.

Mr. TAYLOR. This record is extremely extensive. Can you tell us what the rationale is for the proposed exemptions from the requirements of the National Environmental Policy Act and the Endangered Species Act?

Mr. BROADBENT. Well, first of all, as I understand that exemption, that is only an exemption for the purposes of this bill. No. 1, we did it because we felt we could move quicker to save the fish under this kind of an exemption than we would be if we didn't. If we had to do a full environmental impact statement on this, we may have lost the fish already. And we think if we can get a settlement, the settlement can be signed and done, and we can move quickly to save the fish.

Mr. TAYLOR. Have there been significant studies already conducted on the environmental aspects of the settlement——

Mr. BROADBENT. Oh, you know, there is through the court history and everything else. If there is anything that is not known of any environmental consequence on these river systems, I really do not know what it is. The millions of dollars that have been spent by consultants and advising attorneys, who have taken these cases through the court system, would indicate to you that there are volumes of evidence on all the environmental consequences.

Mr. TAYLOR. As we move on this legislation, we will probably have to have access to that kind of information and supplement the record——

Mr. BROADBENT. All of our information, we will dig it out from wherever it is.

Mr. TAYLOR. And I guess that answer applies not only to NEPA, but also the Endangered Species Act.

[At the time the hearing went to press, no additional information had been received.]

Mr. BROADBENT. Yes. Now there are a lot of people who would tell you that. We think that the purpose of the Endangered Species Act is to give an opportunity to endangered and threatened species to survive. We think this act enhances the opportunity for those fish to survive.

Without this act, I do not think you could do anything under existing laws because of the adjudicated settlement on *Orr Ditch* and *Alpine*. Now, some attorneys may disagree with me, and I am not an attorney, so it is easy for me to speak like one—and I like to argue with them. But it appears to me that there would be very little chance that you could do anything because those decrees have been ratified by the Supreme Court. And so, I do not think you can do much.

It seems to me that our only opportunity to enhance the opportunity under this act is to go ahead and move it and say, "Listen, we're doing everything we can." Now, this will not preclude other actions being taken under the Endangered Species Act. This only applies to this settlement legislation. Any other actions that can be taken under the Endangered Species Act could still be moved.

Mr. TAYLOR. Earlier we heard the testimony from the Governor with respect to the adequacy of the State contribution and the means by which it is measured against the general population. I wondered if you had any reflections on that, particularly in terms of the Federal contribution here.

Mr. BROADBENT. Well, I think we provided the committee with some of the other settlements that have gone on over the last few years and the costs, and the Federal contribution and the State contribution. If not, we would be happy to.

I feel that this is a legitimate contribution on behalf of the State of Nevada. And I will have to tell you that I actually appeared before the State legislature some several years ago and said that. I think it is a—I think clearly, you know, that the State is capable and able of putting up some more money. But I think as you look at the responsibilities we have under the Indian trust responsibility, under the Endangered Species Act, and under the Fish and Wildlife Coordination Act, and we look at the flyway for Stillwater, I think there are some Federal responsibilities that even if you look at other legislation that has been passed, that has a sizable contribution from the Federal Government, and a lesser contribution from the State Government, this is clearly within that realm.

Mr. TAYLOR. I might just note that the testimony, I believe, of the Pyramid Lake Tribe, which we will hear later today, suggests that the $21 million that is authorized under this bill, as it is presently drafted, in their opinion is going to fall substantially short of the kinds of activities that the United States is committing itself to here.

Mr. BROADBENT. Well, I understand that is in their testimony. I was in the litigation and the negotiating sessions, and in the last session we had that was not an issue. I understand they have reevaluated that and appraised that issue. We would be happy to meet with them and talk about it.

I would not indicate to anybody that there is an open pocketbook to solve all the problems. What we are trying to do with this is get a fair settlement. And we do not say by this legislation that there is not a right of the Bureau of Reclamation through its appropriation process, the Fish and Wildlife Service, or BIA to come back at some later date and ask for funds that may be needed to accomplish the purposes of this act which the settlement provision might not be able to do.

We say that we are capping our pocketbook from the Federal Government, but clearly the regular appropriation process is available to all the agencies if they have a need to try to solve some of the problems.

Mr. **Taylor**. I just have one further question that I would like to ask. In the statement that was submitted this morning, on page 4 was one of the concerns that is being expressed, the use of payments. There is the recommendation that the first sentence in section 110 should be revised to read that, "Subject to the conditions provided in subsection (b) to meet obligations in section 104"—which I believe is a damage provision—"the Secretary shall pay from funds available to the Department of the Interior tribal trust fund, authorized in section 109, an amount equal to the replacement cost."

This seems to be in conflict with the fund that is set up under section 109, the tribal trust fund.

Mr. **Broadbent**. I am not finding where you are. I am not sure that my—mine is doubled spaced, so I am not sure that I am in the right place.

Mr. **Taylor**. Well, it's page 4 of the statement that was submitted this morning. I might just state——

Mr. **Broadbent**. Let me respond to that for the record, would you please?

Mr. **Taylor**. Yes.

Mr. **Broadbent**. Because I cannot seem to find it, and we will be happy to respond.

Mr. **Taylor**. I am sure that we will have a number of questions that will follow from this.

[At the time the hearing went to press, no additional information had been received.]

Mr. **Taylor**. I have no further questions. Virginia Boylan is here on behalf of the minority staff, and Patricia Zell is here, and if you have any follow up questions?

Ms. **Boylan**. I just have one followup question, and that was the contribution, the $21 million and the $8 million. Do you—the estimates now are that that is sufficient to do the job you are supposed to do in section 104?

Mr. **Broadbent**. I think probably the Fish and Wildlife Service tells you that in order to do Marble Bluff Dam and do it right it may take more money than that. We think the money mentioned in our testimony is sufficient to do that process and we have a menu of things that we could do under this $21 million plus $8 million, $29 million. I think it is the opinion of the administration that that is sufficient to carry forth the requirements of this act.

Now, clearly if—and Dr. Hester is here from the Fish and Wildlife Service and would be happy to tell you, but I think I can tell you what he would tell you, Dr. Hester, that they would like to have more money. And I do not—I mean, under a realistic estimate of what they think it would cost to fix Marble Bluff Dam, and that is a big cost to them.

But we think that by adequate planning, and with the fact that we are going to be modifying the operations or exchange agreements on the Truckee River, and because we are going to be adopting an OCAP which we think will be fair to all concerned, that through that process we are going to be able to take care of it.

Ms. **Boylan**. But if you aren't, you will come back and ask for more money.

Mr. **Broadbent**. I would hope the Fish and Wildlife Service would be banging on your door.

Ms. **Boylan**. Thank you. Senator Burdick has a followup question. Was the Office of the Assistant Secretary for Indian Affairs a participant in the development of the Department's position on this bill?

Mr. **Broadbent**. I do not know. Let me research the record and I will get that information to you as quickly as possible. I am told that there are extensive letters back and forth between the Government and the States on this issue, that there is a—oh, excuse me. On our testimony?

Ms. **Boylan**. Yes.

Mr. **Broadbent**. Oh, excuse me, yes. This testimony cleared through the Department, BIA, Fish and Wildlife Service, the Solicitor's Office, Policy, Budget and Administration, and the Secretary. It cleared through the whole process.

Ms. **Boylan**. Thank you very much.

Mr. **Broadbent**. And OMB. And Justice.

Mr. **Taylor**. Thank you very much.

Mr. **Broadbent**. And probably some others I do not even know about. Thank you.

Mr. **Taylor**. Thank you very much. I have no further questions. It is 11:50, the next panel I think is probably—by the time we get around to asking questions, we would run substantially past 12. We are unable to hold this hearing room past 12, so I am going to suggest that we break for lunch. We have a different hearing room that we will assemble in at 1. It is room 428 of this building, room 428 of the Russell Building.

I would also like to announce that the Pyramid Lake Tribe would like to show a slide presentation tomorrow between 2:30 and 4 in the afternoon in room 1324 of the Longworth House Office Building. I think that is the same hearing room that you will be having your hearing in tomorrow.

So, we will stand in recess until 1, and we'll reassemble in room 428 of Russell.

[Whereupon, a luncheon recess was taken.]

AFTERNOON SESSION

Mr. **Taylor** [presiding]. The committee will come back to order. Our first panel of witnesses this afternoon will be Mr. Roland Westergard, director, State of Nevada Department of Conservation and Natural Resources; accompanied by John Hoffman and Harold Swafford.

STATEMENT OF ROLAND D. WESTERGARD, DIRECTOR, STATE OF NEVADA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES; ACCOMPANIED BY JOHN HOFFMAN AND HAROLD SWAFFORD

Mr. **Westergard**. Mr. Chairman, as you've indicated I am Roland D. Westergard, director of the State of Nevada Department of Conservation and Natural Resources. I have submitted a detailed written statement of testimony on this legislation.

I feel that Governor Bryan very succinctly this morning presented the State's position on the legislation, and I would limit my remarks to an indication that as a member of the negotiating team, that I definitely support the legislation and would respectfully urge favorable consideration by this committee of that legislation.

I would just like to elaborate very briefly on a couple of points that the Governor made in response to questions, in particular those by Senator Burdick. He specifically inquired about the participation of the Pyramid Lake Tribe in the compact negotiations. The tribe was not officially a party to those negotiations, but the record of the compact minutes over the many years of negotiations will reflect frequent attendance by the members of the tribe and their counsel.

They were repeatedly asked and invited to participate actively in the discussions, and by the tribe's choice, through their counsel at that time, they declined the opportunity to actively participate. I think the record would reflect periodic comments and statements by representatives of the tribe. But I would like to stress that they oftentimes were present and did have the opportunity to participate.

As regards to the question of the Walker River Tribe, subsequent testimony by representatives of the Walker River Irrigation District and the Walker River basin area will indicate and confirm to you, Mr. Chairman, that the record of the minutes of the compact commission meetings will confirm not only the attendance by at least one member of the tribe, but the attendance and in effect confirmation of certain provisions of the compact by representatives of the Bureau of Indian Affairs.

With that, Mr. Chairman, I would defer to you as to whether you'd like me to respond to certain questions, or if it would be more appropriate to hear from people from the Sierra Pacific and Truckee-Carson Irrigation District and then respond jointly. We could respond jointly to any questions at the conclusion of the presentation of their testimony.

Mr. **Taylor**. I would like to hold any questions until the other members on your panel make any statement they might wish to, and then we could ask it of all three of you.

Mr. **Westergard**. Thank you, Mr. Chairman, for the opportunity to make these brief comments. In summation, let me just say again, a lot of effort has gone into these negotiations. As was indicated in a lot of the testimony this morning, there has been a lot of give and take and compromise. And we think, from the State's perspective, that that is a good solution to a long, tedious issue, several issues.

And we again respectfully urge your favorable consideration of the legislation before you.

Thank you, Mr. Chairman.

[Mr. Westergard's prepared statement, on behalf of the State of Nevada, and a followup letter commenting on a letter to Mr. Shaw (attached to Mr. Thorp's prepared statement) follow. Testimony resumes on p. 176.]

TESTIMONY OF ROLAND D. WESTERGARD, DIRECTOR, DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES OF THE STATE OF NEVADA

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

REGARDING

S. 1558 - A BILL TO SETTLE CERTAIN CLAIMS AFFECTING THE PYRAMID LAKE PAIUTE INDIAN TRIBE OF NEVADA AND FOR OTHER PURPOSES

WASHINGTON, D. C.

OCTOBER 2, 1985

Mr. Chairman and Members of the Committee: My name is Roland D. Westergard. I am Director of the Department of Conservation and Natural Resources for the State of Nevada. My department has jurisdiction over lands and waters within the State of Nevada. I have responsibility for the conduct of pending litigations involving the waters of Lake Tahoe and the Truckee, Carson and Walker Rivers in Nevada, which litigations would be settled by this legislation. I have also been delegated the authority by the Nevada Legislature to engage in settlement negotiations of such litigation and to oversee the expenditure of $8 million in State funds to be contributed as Nevada's share toward such settlement. The remaining funds are requested to be appropriated by this legislation.

The legislation before you for consideration is the result of long, tedious and often tenuous discussions and negotiations between parties that for years have been adversaries in the critical issues of allocation and distribution of waters of the Truckee, Carson and Walker Rivers and Lake Tahoe.

It is important to recognize that the most recent negotiations and discussions resulting in this bill followed repeated attempts over a period of years to arrive at a resolution and settlement through similar discussions and negotiations. Each time the parties reached a certain point of impasse, negotiations were terminated and concluded. It was repeatedly recognized by all the parties as representatives of the people of the States of Nevada and California, of various local communities and of the public in general, that it was imperative and a distinct obligation to, once again, attempt to resolve not only interstate existing and potential conflicts, but also intrastate existing and potential conflicts, so as to provide for a lasting and equitable resolution of the issues involving the rights to these waters.

Thus the significance of the proposed resolution of these issues reflected in the legislation before you cannot be over-emphasized.

Section 101 of the bill recognizes the purposes for which the bill was introduced, including the protection of the Cui-ui and Lahontan Cutthroat Trout in the lower Truckee River and at Pyramid Lake, the supplying of municipal and industrial water for the Cities of Reno and Sparks and Washoe County, Nevada, and the dismissal of numerous lawsuits that are now pending.

Section 102 defines many of the terms that are used in the Act.

Section 103 protects existing court decrees; however, the bill recognizes that it will be necessary to modify Carson-Truckee Water Conservancy District v. Clark, 741 F.2d 257 (9th Cir., 1984) to provide municipal and industrial water for the Reno-Sparks area. Other existing decrees, many of which are enumerated in Section 103, will not be modified. The cases specifically identified in Subsection 103(a) are extremely important adjudications affecting the rights of numerous water users. The draftsmen did not intend that any provision would be deemed to override those important court decisions.

However, there is provision at Subsection 103(b) for the possibility that following the appropriate court procedures, where all individual rights can be protected, those decrees may be modified by the parties to those decrees.

Section 104 provides for the maintenance of a lake level for Pyramid Lake based on a ten year moving average. The lake level to be maintained is approximately 17 feet below the existing elevation of the lake. The average lake level to be maintained is the result of studies and negotiations conducted by the Pyramid Lake Tribe and the United States. The lake level maintenance was a specific objective of the United States and the Pyramid Lake Tribe in past litigation. However, those efforts proved unsuccessful in court. One of the trade-offs that benefit the Pyramid Lake Reservation and the fishery is the establishment of a duty on behalf of the Secretary of Interior to maintain the lake level set forth in Section 104 of the bill. The two year moving average requirement was also worked out between the Pyramid Lake Tribe and the Department of the Interior. Its objective is to avoid wide fluctuations in the lake in a way that might prove detrimental to the fishery habitat.

Section 105 sets forth the water management plan to be implemented.

Subsection 105(a) empowers the Secretary to enter into agreements and take actions that may not be otherwise specifically authorized by law. As more fully set forth in later sections of the legislation, many comprehensive agreements will be required as part of the resolution of the critical issues existing between the parties. Before those negotiations can commence on a meaningful basis, the authorities of the Secretary of Interior need to be specifically set forth as is accomplished in this section of the bill.

This subsection provides authority to the Secretary to enter into an agreement with the Truckee-Carson Irrigation District for rehabilitation and betterment of the Newlands Project including the lining of certain canals. Such rehabilitation and betterment project must include a component for the Stillwater Wildlife Management area and other wetlands areas adjacent to the Newlands Project to mitigate fully the effects of such rehabilitation and betterment. It is recognized that the wetlands areas have been reduced drastically during the last century and that mitigation is critical to enable these areas to continue as viable and protected wetlands.

Subsection 105(b) is particularly important because it authorizes the Secretary to enter into a contract for the sale of water from Stampede Reservoir for municipal and industrial uses in Reno, Sparks and Washoe County, Nevada. Without the specific authorization, the Secretary would be precluded from such sale because of the status of decided litigation.

Subsections 105(c), (d) and (e) provide for the execution of a contract by the Secretary for the delivery of Stampede water in amounts and at times to be agreed upon by the Secretary, the Tribe, Sierra Pacific Power Company and the Carson-Truckee Water Conservancy District. Such agreements would also necessarily include provisions to protect the interests of the State of California in the yield from Stampede Reservoir. It is contemplated that the M & I use of Stampede would be phased in over several years and all of the contracted water would not be available immediately for M & I purposes. This will enable the Secretary to assure the protection of the Cui-ui and Lahontan Cutthroat Trout at Pyramid Lake while other fish protection programs are being established under this legislation.

Subsection 105(f) provides for the payment to the United States of the reimbursable portion under the Washoe Project Act (43 USC 614). The reclamation fund has not received any reimbursement from the Washoe Project construction, but under this subsection the M & I uses would generate reimbursement and replenishment of the reclamation fund for the project.

Subsection 105(g) authorizes the Secretary to negotiate with interested parties for storage of privately owned water in Stampede Reservoir to the extent storage is available. This flexibility may prove very important in the formulation of an overall management plan.

Section 105 provides further for reimbursement of lost revenues, including property taxes, as the result of any land or waters that are purchased by the United States and taken out of production to be used to enhance the Pyramid Lake fishery. One intention of the bill is to avoid financial hardships as a result of solving the difficult water questions.

Section 105 also authorizes the Secretary to file applications with the Nevada State Engineer to change points of diversion, place, means, manner or purpose of use of any water rights acquired by the Secretary for the benefit of the Pyramid Lake fishery. The intent of this section is to enable the Secretary to transfer purchased water rights in order to carry out the purposes of the act. Following State procedures will protect all parties interested in any proposed change.

Subsection 106(a) obligates the Secretary to formulate and commence a fish enhancement program for the benefit of the Cui-ui and Lahontan Cutthroat. This section directs the Secretary to undertake a comprehensive program of a broader and more specific nature than would be suggested by the general provisions of the Endangered Species Act. It is an affirmative program designed to protect and preserve the Cui-ui and the Lahontan Cutthroat Trout in ways that would be unavailable to the Secretary in the absence of this legislation. This comprehensive program, made possible by the agreements of the parties, exceeds the present ability of the Secretary of Interior to protect and enhance the fishery under existing court decrees and other constraints.

Subsection 106(b) sets forth various programs which the Secretary may select to enhance the Pyramid Lake fish resources. It is anticipated that the Secretary will choose those programs which will enhance the fishery in the most cost effective manner. The contribution of $8 million by the State of Nevada, as set forth in Section 108, will be available for these newly authorized programs.

Section 107 sets forth the effective dates of various provisions of the act.

Subsection 107(a) states several conditions that must be met to protect the interests of the parties. Among the features of this subsection is a requirement that the Pyramid Lake Tribe will receive a permit from Nevada for the use of all unappropriated waters of the Truckee River, which is significant for the maintenance of the lake level. A state permit is important to the Tribe since its claim for a Winters reserved right was rejected by the United States Supreme Court in Nevada vs. United States, 103 S. Ct. 2906 (1983). Sierra Pacific Power Company and Washoe County would be required, as a condition to the effectiveness of this legislation, to withdraw applications which they now have pending before the Nevada State Engineer, and which are senior to the Tribe's application. The Sierra Pacific and County applications, if granted, would significantly impact the level of Pyramid Lake, contrary to the aspirations of the Pyramid Lake Tribe and the United States. The effectiveness of the legislation would not be complete until Nevada agrees to the contribution of $8 million as set forth in Subsection 108(b)(1) of the bill. Because the expenditure of sums would be one of the last acts accomplished in the overall settlement, Nevada would be bound to contribute those sums by a duly enforceable agreement, even if the actual expenditure of those funds occurs after the period available for the negotiation of necessary agreements. The draftsmen recognized that the initiation of a state bond issue requires time to complete and it would be unrealistic for these efforts to go forward until such time as the basic agreements were in hand.

The effective date of the legislation is also dependent on the dismissal of a number of pending litigations in the State of Nevada and in the State of California. These litigations have consumed countless public and private dollars and because of the limited quantity of water available to resolve these disputes it is doubtful that this litigation could ever be resolved by settlement and compromise without the additional resources and authorities provided under this legislation.

Section 107 requires that agreements relating to operating criteria for the Newlands Project and reservoir storage must also be in place.

Subsection 107(b)(1) provides a one year period to meet all of the necessary conditions. This one year limitation is designed to promote the present atmosphere of negotiation and compromise, bring the parties together before other circumstances or constraints make negotiations more difficult, and to avoid the commitment of state and federal funds for an unduly lengthy period of time. There is a further proviso in Subsection 107(b)(2) that would allow the Secretary of Interior and the Director of the Nevada Department of Conservation and Natural Resources to extend the one year limitation period for up to an additional six months. This additional period would only be utilized if the satisfaction of all necessary conditions is promising, if not imminent.

Section 108 provides for a settlement fund in the amount of $29 million, $8 million of which will be contributed by the State of Nevada. In 1983 the Nevada Legislature provided that as part of a negotiated settlement package the State is authorized to issue general obligation bonds for not more than $8 million, as the State's share of the cost associated with the project identified in the within bill. Nevada is thereby responding to the federal administration's insistence upon cost sharing by non-federal entities.

Subsection 108(d) provides that funds expended from the settlement fund shall be deemed to be one-half from the amount contributed by the State of Nevada and one-half contributed by the federal government until a total of $16 million is expended. This provision was necessary to insure that the proper contributing party is credited in the event the funds are not fully expended and returned to the State or the federal government as provided in later sections.

Section 109 provides for the establishment of a trust fund in the amount of $10 million for the benefit of the Pyramid Lake Paiute Tribe. This is a major benefit to the Tribe.

Section 110 provides for the payment of damages to the Tribe in the event the lake levels specified in Section 104 are not maintained.

Subsection 110(b)(1) provides that the United States shall have no right to recover any portion of such damages paid to the Tribe from any person or entity as this is the Secretary's sole responsibility.

Subsection 110(b)(2) places a ceiling on damages. This provision is a matter between the Tribe and the Department of the Interior.

Subsection 111(a) provides that obligations presently owing to the United States by the Truckee-Carson Irrigation District for irrigation construction costs are cancelled.

Subsection 111(b) provides that project operating criteria shall be agreed upon by the Secretary and the Truckee-Carson Irrigation District, subject to the approval of the Tribe and the State of Nevada. It is important to Nevada to insure that operating criteria are adopted which will sufficiently protect recreation uses at Lahontan Reservoir, the wetland areas in Lahontan Valley and uses of water upstream from Lahontan Reservoir.

Lahontan Reservoir provides one of the outstanding recreational use areas in the State of Nevada. The State has invested more than $5 million in development of recreational facilities at Lahontan. This recreational area draws an average of 550,000 visitors each year. In addition, Nevada spends $337,000 annually in operating costs for this facility.

There are very significant fish and wildlife resources associated with the Newlands Reclamation Project. These resources include 22,000 surface acres of fishable waters throughout Lahontan Valley with Lahontan Reservoir being the most important fishery within the project area. These fishery resources support about 100,000 angler days of fisherman use annually and account for a harvest of nearly 250,000 game fish.

Lahontan Valley also contains the most important wetlands in Nevada. During normal water years the valley has maintained approximately 47,000 acres of wetland habitat which support a broad array of wetland associated wildlife. Most noteworthy is the fact that 75% of Nevada's fall duck population depends upon these wetlands, as does 65% of the state's tundra swan population and 50% of the state's Canada goose population. Additionally, one-third of the Pacific Flyway population of canvasback ducks stage at Stillwater Marsh during migration periods, the largest of the top three breeding populations of white-faced ibis in the United States occurs at Carson Lake, the Anaho Island white pelican colony uses Lahontan Valley wetlands extensively for feeding grounds, and about one-quarter of the state's wintering bald eagle population use these wetland areas. Economically, expenditures for hunting and fishing recreation within the Newlands Project area amount to $3 million annually.

With fish and wildlife values of such magnitude, the State of Nevada considers the protection of these wetlands and the maintenance of Lahontan Reservoir at acceptable water levels as critical to the state's interest. Therefore, any actions which are precipitated by this legislation must make provision for the continued maintenance of these extremely valuable natural resources.

The legislation also recognizes the importance of these wildlife values at Subsection 105(a)(3) in the event of the implementation of rehabilitation and betterment projects at the Newlands Project.

Section 113 in the original form of the bill exempts the projects undertaken pursuant to this legislation from the requirements of the National Environmental Policy act and the

Endangered Species Act. The time constraints that are necessarily included for the completion of this legislation obviously preclude the necessary time and study that environmental impact statements would require. Generally speaking, the environmental impacts of the actions that are possible under this legislation have been the subject of many studies and much litigation. The parties to these agreements are knowledgeable and sensitive to the environmental considerations that would necessarily enter into the policy judgments required to settle this case. This is particularly so in the case of the State of Nevada and the Secretary of Interior. The delays and expense involved in newly initiated environmental impact statements would be counter productive and not cost effective given the limited time and the limited resources available to affect a settlement.

The settlement contemplated by this legislation provides much greater benefits for the Cui-ui and Lahontan Cutthroat Trout, than existing conditions would permit. The funds contributed by the State of Nevada and to be appropriated by Congress would only be justified as part of the resolution of the broad issues addressed by both titles to the bill. It is critical that the agreements not be subject to prolonged collateral attack in the courts under the National Environmental Policy Act or the Endangered Species Act. It is understood that the Secretary of Interior could not be expected to approve the necessary agreements, if there was any serious question that the interests of the Cui-ui and Lahontan Cutthroat were not protected so as to make the statutory waivers beneficial. It is also necessary to provide the ESA waiver to give the Secretary a free hand not presently available because of existing litigation outcomes.

From the point of view of the State of Nevada, the singular most important feature of this legislation is the ratification of the California-Nevada Interstate Compact.

The California-Nevada Interstate Compact was formulated to provide each of the States of California and Nevada their equitable share of the interstate waters of Lake Tahoe and the Truckee, Carson and Walker River Basins. The compact is intended to resolve many of the problems rising from each state's increasing use of a limited, common water supply. These problems, which finally resulted in the determination to negotiate an interstate compact, first came to public light in the late 1940's when the State Engineers of California and Nevada faced difficulties in the administration of water rights on the Truckee, Carson and Walker River Systems. The principal water using agencies in the lower basins were protesting all new water right applications on these streams which were not supported by long-term carryover storage. These agencies took the position that there was no unappropriated water available from natural flow in excess of their rights.

In 1947-48 an attempt was made to resolve this water right problem in the Lake Tahoe Basin. An investigation of the use of water in the Lake Tahoe watershed was made jointly by the two states in 1948, and results were reported in June 1949. The report concluded that granting applications then pending or those to be filed within the then foreseeable future for use within the

Tahoe Basin for domestic purposes and recreational uses would have little, if any, effect toward depleting Lake Tahoe to the detriment of downstream users. The report went on to recommend that in regard to applications for appropriation of water for domestic and recreational use in the Lake Tahoe watershed, it should be the general policy to continue to grant such applications. Subsequently, the State Engineers of the two states issued permits for water for domestic purposes over the protests of downstream water user organizations.

During the early 1930's, the Lake Tahoe Interstate Water Conference Committee, created by the Governors of Nevada and California, was actively engaged in adjusting conflicting differences raised by the then proposed "Truckee River Agreement". The Federal Government proposed to execute this agreement with Nevada water users as a supplement to the 1915 Truckee River Decree. As a result of the Conference Committee's efforts, provisions were incorporated into the decree establishing a maximum permissible water level for Lake Tahoe of 6229.1 feet above sea level. This maximum stands today and provides protection against avoidable flooding for all the properties adjacent to the Lake.

In the Carson River Basin, from 1941 through 1949, the California State Engineer provided watermaster service on the West Carson River. In 1950, the State watermaster was replaced by a Federal watermaster acting under a preliminary adjudication and temporary restraining order filed in the case of *United States v. Alpine Land and reservoir Company, et al*. This case, initiated in 1925, was being pushed after many years of inactivity, in order that the water rights of the Carson River System would be adjudicated prior to construction of the Washoe Project of the U. S. Bureau of Reclamation. A final decree was entered in the Alpine case in 1980 by the federal district court for Nevada.

In the early 1950's the Walker River Irrigation District instituted engineering studies of potential water projects on the Walker River for the benefit of the District lands in Nevada. These studies revealed that the various projects would utilize nearly all of the remaining unappropriated waters of this river. This alarmed the Walker River water users in California and made them more aware than ever of the need for a settlement of the claims on the Walker River.

As a result of these water conflicts, the desirability of an interstate compact between California and Nevada was discussed by the two states. However, it was not until 1955 that legislation was obtained initiating compact negotiations. The legislation received further impetus at that time from the pending authorization of the Washoe Project, a Bureau of Reclamation Project to develop additional waters in the Truckee River and Carson River Basins.

Under similar legislation passed by the legislatures of California and Nevada in 1955, each state established a commission for the purpose of negotiating an interstate compact which would provide for the equitable distribution and use of the waters of Lake Tahoe and the Truckee, Carson and Walker River

Basins.

Federal legislation was also passed authorizing these negotiations and providing for the appointment and participation of a federal representative.

In general, provisions of the interstate compact, which were arrived at after nearly thirteen years of negotiations, reflect several basic principles. These can be summarized as follows:

1. Existing rights and beneficial uses are recognized as having the highest priority of use of available waters.

2. Waters not needed to satisfy these recognized existing rights and beneficial uses are to be divided in proportion to water needs of the two states.

3. Uses of water made under federal claims of right in each state are to be considered as benefiting the state in which the use is made and hence are to be charged against the allocation of that state.

Summary of Major Provisions of Compact

ARTICLE IV - California-Nevada Interstate Compact Commission

Article IV establishes a permanent commission, provides for the selection of members and provides for the funding for the work of the commission. The ex-officio chairman of the commission is a representative of the United States to be chosen by the President of the United States.

ARTICLE V - Lake Tahoe Basin

Upon construction and completion of an overflow weir at the source of the Truckee River above the existing structure at the outlet of the Lake, the total annual gross diversion from all sources in the Lake Tahoe Basin shall not exceed 34,000 acre-feet. The State of California is allocated 23,000 acre-feet annually and the State of Nevada is allocated 11,000 acre-feet annually for use within the Basin.

Existing transbasin diversions as of December 31, 1959, from the Lake Tahoe Basin in both states may be continued if such rights were recognized as vested rights under the laws of the state in which the diversion is made. The existing transbasin diversions recognized by the compact are: 1) In California, a diversion from Echo Lake, a tributary of the Upper Truckee River Basin, into the American River Basin in California averaging approximately 1,700 acre-feet per year. 2) A Nevada transbasin diversion is from North Creek (Third Creek), a tributary of Lake Tahoe, into Washoe Valley of 5.5 cubic feet of water per second. 3) A second Nevada transbasin diversion of a maximum of 3,000 acre-feet annually from Marlette Lake for use in Nevada.

These three transbasin diversions recognized by the Compact are historical uses and in existence on December 31, 1959. In Nevada the diversion from North Creek into Washoe Valley was determined by a District Court in Washoe County, Nevada, in 1892. The Marlette Lake diversion represents a part of the water system started in 1871 by the predecessors of the Virginia City Water Company to bring water from the Sierras to Virginia City to operate the ore reduction mills of the newly discovered silver bonanza.

ARTICLE VI - Truckee River Basin

The first allocation to Nevada is for water for use on the Pyramid Lake Indian Reservation in the amounts provided in the 1944 Truckee River Decree (Final decree in United States vs. Orr Ditch Company, et al., U. S. District Court for the District of Nevada, Equity No. A-3). This allocation recognizes the authority of the Federal Court Decree to serve an early priority (1859) of water to the Pyramid Lake Indian Reservation of some 30,000 acre-feet annually.

There is allocated to California: 1) The right to divert 10,000 acre-feet of water per calendar year within the Truckee River Basin in California. This water may be stored in reservoirs at times when the flow in the Truckee River at the Iceland gauge exceeds 500 cubic feet per second. This is the provision in the compact to allocate water from the Truckee River for use in California which was not a part of the Truckee River Decree of 1944. 2) The amount of water as decreed to the Sierra Valley Water Company by judgment in the case of the United States vs. Sierra Valley Water Company in the U. S. District Court for Northern California. The amount of water decreed to the Sierra Valley Water Company totaled 60 cubic feet per second for irrigation, domestic and stockwatering during the irrigation season of March 15 to September 30 of each year. 3) Six thousand acre feet of water annually from the conservation yield of Stampede Reservoir having a storage capacity of 225,000 acre-feet. California may divert all or any portion of said 6,000 acre-feet from Stampede Reservoir directly or by exchange from any source on the Truckee River or its tributaries or from Lake Tahoe. 4) When the

16,000 acre-feet allocated to California is being used or its total use is imminent, California will be permitted to develop additional yields of water for use in California, either directly or by exchange if all existing beneficial uses in Nevada are recognized. Nevada may share in such additional yield by bearing a proportionate cost of the development. 5) The right to store in Prosser Creek Reservoir a maximum of 30,000 acre-feet of water annually. There is allocated to Nevada all water in excess of the allocations made to California.

ARTICLE VII - Carson River Basin

There is allocated to the State of California: 1) The right to divert from the West Fork Carson River for existing nonirrigation uses and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands determined to be approximately 5,600 acres, an aggregate flow of water equal to a thirty-day average of 3 cubic feet per second per 100 acres or 168 cubic feet per second for the area as a whole but not to exceed a maximum aggregate diversion of 185 cubic feet per second. One unique feature of the Compact is that it provides for the rotation of all or a portion of the flow of the West Fork between California and Nevada users if the flow falls below 175 cubic feet per second. 2) The right to divert from the East Fork Carson River for existing nonirrigation uses and for direct irrigation use commencing on March 15 and ending on October 31 of each year on presently irrigable lands, determined to be approximately 3,820 acres, an aggregate flow of water equal to a thirty-day average of 3 cubic feet per second or 115 cubic feet per second for the area as a whole. 3) The right to store 2,000 acre-feet of water per annum within Alpine County for supplemental use on presently irrigated lands adverse to Lahontan Reservoir.

There is allocated to the State of Nevada: 1) The right to divert water from the Carson River and its tributaries commencing March 15 and ending October 31 of each year at the rate of 3 cubic feet per second per 100 acres for use on presently irrigated lands above Lahontan Reservoir determined to be approximately 41,320 acres. The rate of 3 cubic feet per second per 100 acres is based on a thirty-day average for the area as a whole and shall not exceed 700 cubic feet per second on the East Fork Carson River, 300 cubic feet per second on the West Fork Carson River, and 220 cubic feet per second on the Main Carson below the confluence. 2) The right to divert or store water in Lahontan Reservoir for use on the Newlands Project subject to diversion for existing irrigation use and to the right of each state to store waters upstream from Lahontan Reservoir.

Both states are allocated the right to store water in existing reservoirs upstream from Lahontan Reservoir to the extent of existing capacities. Present uses of water on National Forest Lands in the Toiyabe National Forest are confirmed and recognized by both states. Additional yields shall be available for development under the currently authorized Washoe Project in excess of existing beneficial uses in Nevada as recognized by Nevada Law. Such additional yields shall be allocated between [illegible] State with equal priority, 20 percent allocated to California and 80 percent allocated to Nevada. Each state has the right to participate in any development project by bearing a proportionate cost of such development. In the event a joint development is not feasible or desirable, each state may develop separately its proportionate share of the remaining water. Waters of the Carson River are not to be used outside the Carson River Basin except by exchange of other allocated waters from the Lake Tahoe or the Truckee River Basins.

ARTICLE VIII - Walker River Basin

The provisions of the decree in the case of United States vs. Walker River Irrigation District, et al., known as Decree C-125, are recognized and confirmed. 2) The right under Decree C-125 to store 85,000 acre-feet of water from the West Walker River in Topaz Reservoir is recognized and confirmed subject to certain exceptions. The first is that a maximum of 85,000 acre-feet of water less reservoir evaporation may be rediverted for use annually from November 1 through October 31 of the following year. The second is that the maximum rate of diversion to each reservoir is 1,000 cubic feet per second. And third, that water qualified for storage and allowed to pass through the reservoir and not rediverted in Nevada will be deemed to have been held in storage. 3) The right under Decree C-125 to store 57,000 acre-feet of water from the East Walker River in Bridgeport Reservoir is recognized and confirmed subject to certain exceptions. The first being that a maximum of 57,000 acre-feet of water less reservoir evaporation may be rediverted for use annually from November 1 to October 31 of the following year; and secondly, water may be stored upstream from the Bridgeport Reservoir without loss to the quantity allocated for storage in the Bridgeport Reservoir. 4) Each state is allocated an amount for existing diversions and uses of water from the Walker River upstream from the Weber Reservoir and not specifically covered in Decree C-125. The Commission after being established to administer the compact will ascertain the amounts and priorities of such uses.

In addition to the allocation to recognize and confirm the provisions of the Walker River Decree C-125, there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet for storage in Weber Reservoir and a later rediversion to use and in addition 9,450 acre-feet per year, both allocations to have a priority of 1933. The season for diversion of water to storage shall be from November 1 to October 31 of the following year. The season for diversion of water directly for use shall be from March 1 to October 31 and at a maximum rate of 60 cubic feet per second.

California is allocated the right to divert water from the West Walker River at the time Topaz Reservoir is storing water, if such diversions have no net effect on the Topaz Reservoir storage for the season.

There is allocated to the State of California, 35 percent of unused waters or waters in excess of the amounts allocated or required to satisfy all rights and uses recognized and confirmed. There is allocated to the State of Nevada 65 percent of such unused water. The reregulation of storage waters allocated are not to be considered as the development of "unused water". Separate development may be undertaken by either state for surface storage of unused water of the West Walker River so allocated.

ARTICLE X - Interbasin Transfers of Use

Article X provides that either state may, directly or by exchange, use the allocations of the Truckee River in the Lake Tahoe or Carson River Basin and the waters of the Carson River in the Lake Tahoe or Truckee River Basin. It further provides that Lake Tahoe may be used as a physical facility to accomplish such an exchange.

ARTICLE XIII - Fish, Wildlife and Recreation

This article determines that the use of water for preservation, protection and enhancement of fish, wildlife and recreation is recognized as a beneficial use.

ARTICLE XXI - Non-Impairment of Rights of United States

Article XXI provides that, except as provided in Article XXII, the Compact cannot be construed as affecting the obligations of the United States to the Indians and Indian tribes or any right owned or held by or for Indians or Indian tribes subject to the jurisdiction of the United States. Nor shall it affect any rights or powers of the United States or its agencies in or to the waters of the Truckee, Carson or Walker River Basin or the Lake Tahoe Basins or the capacity of the United States to acquire rights in and to the use of those waters. Nor may it be construed as subjecting any property of the United States to taxation by either state. Nor may it be construed as subjecting any property of the United States to the laws of any state to an extent other than the extent to which such laws be applied in the absence of the Compact.

ARTICLE XXII - Ratification and Consent

Article XXII provides that the Compact shall be effective as it has been ratified by legislators of Nevada and California and has been consented to by act of Congress of the United States and that Congress has provided in its consent legislation or by separate legislation that certain provisions of the Compact shall be binding upon the agencies, wards and instrumentalities of the United States.

In 1965, a provisional draft of Compact was adopted by the two states. This was submitted to all interested agencies for comments and suggestions. Many federal agencies including Interior, Justice, Agriculture, and Commerce responded with comments and suggestions on how the Compact might be improved. Following the receipt of the comments of the federal agencies, California and Nevada spent two more years negotiating. The comments of the federal agencies were considered and utilized, and resulted in many changes in the proposed Compact. In some few instances the two states felt that the suggestions of the federal agencies could not be incorporated in the Compact.

In 1968, following the completion of the present Compact, the two states answered comments of the federal agencies to the 1965 draft. In many cases the suggestions had been adopted and in those instances in which they could not be used, the commission explained the reasons therefor.

Those provisions which the two states believe the United States should agree to be bound are found in Article XXIII of the Compact and concern only the total amount of water allocated to each state.

It is of utmost importance for the governing agencies of the United States to understand that the United States is not bound to any particular use within either of the two states nor to any particular development of any future project within the states, but would only be bound with respect to the allocations of water between the two respective states. Consequently, for effective administration and effective allocation, the states of California and Nevada believe most strongly that it is necessary for the United States to consent to enter into a binding contract insofar as Article XXII of the Compact is concerned.

The United States owns or controls almost all the storage and diversion facilities on the Truckee and Carson Rivers and Lake Tahoe. Its failure to agree to the allocations provided in the Compact would nullify the force and effect of the substantive provisions of said Compact. As an example, the United States claims the rights to all water stored in Lake Tahoe between elevations 6223 and 6229.1, or approximately 720,000 acre-feet of water. The Compact provides for use within the Tahoe Basin of 34,000 feet allocated on the basis of approximately 2/3 to California and 1/3 to Nevada.

The area to which the Compact applies is one which unfortunately cannot claim either a firm or sufficient supply of water for its potential domestic, industrial and recreational development. Thus, present uses are provided for in the Compact in terms of allocation of the water to the respective states with the hope that conservative use may allow some development for the future in these areas.

Should the United States refuse to agree to these allocations and refuse to consent to be bound by them, neither state can plan, develop or assume its individual obligation for what appears to be its future destiny. Certainly presently unused waters that are available and could be developed in the future would entail partnership of the United States as a party to the development. Each of the two states look to the United States as a partner in such development rather than as a partisan. The waters in excess of present uses have been allocated as between the two states and if the United States as a partner in the development of any future project, which at present appears to be the only realistic approach, were not bound by the allocations of water the agreements between the two states would be of no effect.

It is extremely important to recognize that the Compact was first ratified by the Nevada Legislature in 1969, by the California Legislature in 1970, and amended by the Nevada Legislature in 1971 to conform identically with the document ratified by California a year earlier. Congressional ratification has not been secured because of the continuing litigation that would be settled and dismissed under the provisions of Title I, of this Act. It is also critical to recognize that the States of Nevada and California have operated under, complied with and recognized the provisions of the Compact over the fourteen year period from 1970 to date. This period of time has conclusively demonstrated the validity, effectiveness and the applicability of the document and further confirms that it does, in fact, provide for an equitable allocation of water between the states in a manner which is not detrimental, nor adverse to the interest or prerogatives of any water user or interest in either state.

On behalf of the State of Nevada, we respectfully urge your favorable consideration of the legislation before you as a vehicle to resolve long-standing, continuing and potentially extended conflicts relating to the limited water supplies of the Truckee, Carson and Walker Rivers and Lake Tahoe.

ROLAND D. WESTERGARD, *Director*

Address Reply to:
Capitol Complex
Nye Bldg., 201 S. Fall Street
Carson City, Nevada 89710
Telephone (702) 885-4360

RICHARD H. BRYAN
Governor

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STATE OF NEVADA

Department of Conservation and Natural Resources

OFFICE OF THE DIRECTOR
CARSON CITY, NEVADA 89710

October 16, 1985

The Honorable Mark Andrews
United States Senator
Chairman, Select Committee on Indian Affairs
Washington, D.C. 20510

Attn: Mr. Peter Taylor

Dear Senator Andrews:

It has come to my attention that a copy of a September 27, 1985 letter from Ali Shahroody to Mr. Wilfred Shaw, Chairman of the Pyramid Lake Paiute Tribe, has been made a part of the record in the matter of S.1558, a bill to settle certain claims affecting the Pyramid Lake Paiute Tribe of Nevada and for other purposes.

The letter specifically alleges that there are discrepancies between the Alpine Decision and the California-Nevada Interstate Water Compact. The letter, further, indicates that if the Compact is administered in its present form, it will affect the availability of the Carson River waters to the Newlands Project and, consequently, affect the availability of Truckee River water for fishery in the lower reaches of the Truckee River and Pyramid Lake.

In accordance with the courtesies extended to allow information to be submitted to augment and supplement the record, I respectfully request that you accept the following material which refutes the allegations in the September 27, 1985, Shahroody letter.

As indicated in earlier testimony before the Committee and in subsequent material submitted, the Compact document itself indicates that one of the major purposes of the Compact is to provide for the equitable apportionment of water between the States of California and Nevada. This is set forth in "Article I, Purposes".

Article III, entitled "Sovereign Relationship", under subparagraph A, provides that each state shall have the jurisdiction to determine pursuant to its own laws the rights to the use of waters allocated to it, and, further provides that the right to use such water shall be limited to such quantities of water as shall be reasonably required for the beneficial use to be served, and shall not extend to the waste or unreasonable use of water.

Article XVIII, "Compact Effect", under subparagraph C, provides that nothing in the Compact shall abridge, limit or derogate against any claim or right of any one to the use of water in either state within the allocations to such state that could or may be made or established under state or Federal law had this Compact not been adopted. Also subparagraph D of that Article includes the following: "Nothing in this Compact shall be construed as granting to any person or entitiy the right to divert, store, or use water."

Allocations for waters of the Carson River Basin are included under Article VII. Subparagraph A specifically provides: "There is allocated to the State of California..." Similarily, subparagraph B, provides, "There is allocated to the State of Nevada..." Subparagraph C, provides, "There is allocated to each state the right to store water in existing reservoirs..."

The provisions cited, specifically, confirm and reinforce the concept that the Compact provides for an allocation of water between the states, not to any particular user and that specific uses by individual parties or entities shall be determined in accordance with the respective state procedures at the same time recognizing rights established through those procedures or through decrees or other state or Federal laws.

The Compact could not increase duties as alleged by Mr. Shahroody and would not result in any discrepencies between the Alpine Decision and the California-Nevada Interstate Compact.

Again, I sincerely appreciate this opportunity to augment the record.

Sincerely,

ROLAND D. WESTERGARD
Director

RDW:vjw

Mr. TAYLOR. I wondered if either Mr. Hoffman or Mr. Swafford had any additional comments to offer?

Mr. HOFFMAN. No, Mr. Chairman.

Mr. SWAFFORD. No, Mr. Chairman.

Mr. TAYLOR. Senator Burdick's questions, I think, went to two different areas of participation. One of them, I believe, was with respect to the negotiation of the California-Nevada Interstate Compact, and I believe that is the part you are referring to there.

Mr. WESTERGARD. Exactly. Obviously they were active participants in the negotiations that resulted in this legislation. But the record would also reflect their attendance, as I indicated in my earlier testimony, at many of the compact commission meetings, separate river committee meetings, as well as meetings of the joint commission of the two States.

Mr. TAYLOR. These were the negotiations that led to the——

Mr. WESTERGARD. Interstate compact; yes, sir.

Mr. TAYLOR [continuing]. Interstate compact. Mr. Westergard, you were very actively involved in the negotiation of the title I settlement provisions?

Mr. WESTERGARD. Yes, sir.

Mr. TAYLOR. Was it known throughout these negotiations that the inclusion of title II, the California-Nevada Interstate Compact, was part and parcel of the settlement discussions that were taking place?

Mr. WESTERGARD. Yes, it was, sir. As a matter of fact, early on in the negotiations, in the discussions of the State of Nevada representatives, including myself, insisted that title II in effect be ratified and confirmed and passed preliminarily, you might say, to title I. As a concession and in good faith negotiations we did concede and consent that it would become a part of the package, and its ratification would be contingent upon the other qualifying issues and matters that must be resolved before the entire and total bill becomes effective—the settlement of the litigation and the other issues.

Mr. TAYLOR. Was there ever any discussion or effort made to bring the Walker River Paiute Tribe or the Washoe Paiute Tribe into the settlement discussions on title I?

Mr. WESTERGARD. Not to my knowledge, sir. And I think the explanation for that, very candidly, is that those—that the provisions of title I do not directly affect those interests. And as it relates to title II, I would just reemphasize some of the testimony from earlier today. The compact went through some 13 years of negotiations, extensive hearings before the joint compact commission, and extensive hearings in the Nevada Legislature of 1969, subsequently in the California Legislature of 1970, and then again in Nevada in 1971.

And the issues that we have heard identified as concerns by the tribe and others were certainly addressed, considered, evaluated, and decisions were made regarding those issues as a result of those extensive hearings at that time.

Mr. TAYLOR. We do have some additional questions, and I would like Pat Zell to become an active participant in this as well as John Vance. Both Pat and John have been working on questions, and Pat, why don't you ask any questions that you feel necessary?

Ms. **Zell**. These are questions that have been submitted by Senator Hecht's office. Are you comfortable with the fact that this bill has an exemption regarding the Endangered Species Act and an exemption from the requirements of the National Environmental Policy Act?

Mr. **Westergard**. Yes; we are. We think that the procedures set forth in this legislation afford the necessary protection and provides finality to the issues that might be addressed through those acts. And we feel not only comfortable, but we are convinced that this is a more effective way to accomplish those purposes.

Ms. **Zell**. Do you believe that the endangered fish would have better biological prospects for recovery under a settlement of the type presented in this bill, or through continuing litigation? And if you do believe that, why?

Mr. **Westergard**. Absolutely and definitely I feel that this legislation is the more expeditious way to accomplish the purposes that are set forth in the bill itself. I couldn't help but take note this morning in the comments by the chairman of this committee, where I think his words were "ensure survival," and we think that the procedures set forth in this bill, as I indicated, are a more expeditious way to accomplish that purpose.

Litigation would be prolonged, expensive, indeterminate, and this bill provides funding to address the very critical nature of the endangered species through the various acts that are going to be required to be taken. We think it will be conclusively in the best interest of the endangered species to proceed with this legislation rather than protracted litigation.

Ms. **Zell**. Is it your view that with the combination of Federal resources and the State contribution that the funding provided in the bill is adequate to accomplish all of the objectives that are outlined in title I?

Mr. **Westergard**. The objectives outlined obviously are very broad. It is going to require a lot of effort. I think those funds are the best estimate available at this time as to what would be required. And I respect the position of the tribe, as indicated in what we have seen in their testimony, that more money is going to be required. But I do think that the appropriation of the money by the Federal Government, and certainly the $8 million to be made available by an action of the Nevada Legislature, is a firm commitment on the part of Government at all levels to support this effort. I think it is reasonable, and I think it is sufficient as of this time at least.

Ms. **Zell**. Governor Bryan stated this morning that he would rely on his experts, referring specifically to you, with regard to the State's position on the proposed section 204, that would essentially put the provisions of title I and title II on an equal footing so that nothing in title II would impair the agreements that are voluntarily entered into under title I.

Do you care to expand on the State's position?

Mr. **Westergard**. Yes; I think the Governor made it quite clear, and it is my position also, that title II cannot be subject to, in any way, the provisions of title I. It must stand on its own. We must have ratification of that compact. And any language that would in any way appear to make that subservient or in any way less binding by virtue of the provisions of title I would not be accepted.

Ms. ZELL. Are you aware that the Department of the Interior's testimony supports the proposal for a section 204, or the substantive content of such a section?

Mr. WESTERGARD. I have not read that testimony. It is my understanding that it was their position that this is something that they would be willing to address, review, and see if something could be accommodated preserving the integrity of title II and not making it subject to the provisions of title I. That is my understanding essentially of the position of the Department of the Interior, but obviously I would defer to their testimony and their comments.

Ms. ZELL. Is it the position of the State, then, that in your analysis of the compact there is nothing in the compact that would interfere or impede in any way the agreements entered into under the authority of title I?

Mr. WESTERGARD. Yes; obviously there are requirements of two efforts yet to be accomplished, and that is the development of the operating criteria and the development of an operational procedure involving all the reservoirs. And I believe, of course, that some of the issues will be addressed in those efforts.

But I don't see anything in the compact that would in any way derogate or impede or impact upon the possibilities of accomplishing the purposes of title I.

Ms. ZELL. Governor Bryan stated this morning that the State's claim to the bed and banks of the Pyramid Lake and to that portion of the Truckee River that lies within the exterior boundaries of the reservation is now a moot issue.

Why is it important that the State not relinquish title to the bed of Pyramid Lake?

Mr. WESTERGARD. I don't really think I can expand on the Governor's comments on that point. I think he indicated that the courts at two levels, the Federal district court level and the ninth circuit level, and by virtue of denial of certiorari, perhaps the Supreme Court has decided under the sovereign immunity provisions or procedures that a case cannot be initiated and pursued by the State of Nevada. And for that reason, I am sure that's the reason that he indicated that the question was moot.

Ms. ZELL. Then are we to understand that the State would no longer take the position that it would be opposed to relinquishing its claim to the bed and banks of Pyramid Lake?

Mr. WESTERGARD. I don't think that I, as a member of the executive branch in the Nevada State government, can conclusively make that decision or that commitment. And I do not want to infer the credibility or validity of any claim that may be made. But if a determination were made, through whatever proceedings that might ensue, I think it would be the prerogative of the Nevada State Legislature to make a determination as to whether or not State property could be relinquished. I don't think a member of the executive branch has that prerogative and that authority.

Ms. ZELL. Thank you.

Mr. TAYLOR. I have another question or two. This legislation obviously contemplates rather lengthy and complex negotiations after enactment of the bill. The concerns that the Walker River and the

Washoe Tribes had seem to spring primarily from the fact that they may have some upstream Winters right claims that would take them into the State of California and effect the water allocation between the two States.

Is it possible to bring the State of California into these negotiations, and could the Walker River and Washoe Tribes be included in this negotiation process over the next year?

Mr. WESTERGARD. Sir, I can only relate to you the results of conversations with representatives of the California Water Resources Control Board and the department of water resources. They have indicated to me—and I would not relay this to you unless it were in response to a question—they have indicated to me they have reviewed in detail this entire legislative package.

Their primary concern is ratification of the interstate compact. I think you will probably be receiving some written testimony on their behalf, indicating that they want to be sure that there is a record, that they can secure their entitlement, for example, of the yield of Stampede Reservoir and some other factors.

Mr. TAYLOR. We did receive that testimony; yes.

Mr. WESTERGARD. Yes; my response would be that the State of California, to the best of my knowledge, is just as committed as you have heard representatives of the State of Nevada indicate today—committed to the ratification of the compact.

Mr. TAYLOR. And in that context, presumably we might hope that they would be willing to sit down and talk with the tribes if it would lead to the ratification.

Mr. WESTERGARD. I am sure that we would all be glad to sit down and explain the provisions of the compact, but I would not want to mislead this committee, or the tribes or anyone else by indicating that that is going to mean renegotiating, because, as I have testified, a long, painful, thorough process was involved in the development of the compact provisions, with opportunities for hearings which were held.

And I would just take this opportunity to briefly stress, again what the Governor and others said this morning, that the interstate compact is an allocation of water between the States. Any water user within either the State of California or Nevada is not in any way precluded from advocating, advancing, or putting forth their claim to any of the resources in either State. Those water supplies that are allocated under the compact would be administered in accordance with the respective State laws. And the compact in no way diminishes the opportunity for people to make their claim and pursue them in whatever forum or whatever avenue or means that they so choose.

Mr. TAYLOR. Well, of course the situation with Walker River would be that if they were to successfully litigate a Winters right claim that went to the upstream waters rising in the State of California, the ultimate use of those waters would be in the State of Nevada.

Mr. WESTERGARD. Yes, sir; I understand that concern. My response to that is that the division of waters between the States of California and Nevada on all three stream systems and Lake Tahoe was very deliberate. On the Walker stream system, for all practical purposes, Nevada gets 65 percent, California 35 percent.

There was, and to my knowledge is today, continuing by direction of the executive agencies in the State of California to the California attorney general's office, a specific directive that if, in fact, Nevada interests should attempt to develop upstream storage unilaterally, without including the State of California, then an interstate lawsuit would immediately be filed.

Our concern in Nevada reflects the interest of the Walker River Tribe, the people in Mineral County, the people in the Mason Valley area, and the people in the Smith Valley area, encompassing the entire Walker River basin in Nevada. We think that we have an equitable, fair apportionment of the water supplies at the Walker and other basins between the two States.

Very frankly, sir, we are extremely concerned about the potential for an interstate suit, not only from the standpoint of costs and time that would be involved—and I would say this to my counterparts from California, we want to be sure that California doesn't get more than 35 percent. If they do, that certainly is going to reflect on the water supplies available to all of us in Nevada, including the tribe and Walker Lake.

So it is our position that Nevada, if you will, got about the best deal they are going to get, and the 65 percent that we would receive is in the best interest of all the water users and all the Nevada interests.

Mr. TAYLOR. I don't have any further questions. Thank you very much, and I am sure that we will be back in touch with you because I think from all of the proposed amendments that have been put in front of us, and will be put in front of us, there is obviously a lot of work that needs to be done on this legislation. And we certainly intend to actively pursue it.

Mr. WESTERGARD. Thank you, sir. We appreciate your attention and the assistance of your staff. Thank you very much.

[The following additional correspondence was received from Mr. Westergard pertinent to his testimony:]

ROLAND D. WESTERGARD, *Director*

Address Reply to:
Capitol Complex
Nye Bldg., 201 S. Fall Street
Carson City, Nevada 89710
Telephone (702) 885-4360

RICHARD H. BRYAN
Governor

DIVISIONS
Conservation Districts
Environmental Protection
Forestry
Historic Preservation and Archeology
State Lands
State Parks
Water Planning
Water Resources

COMMISSIONS
State Conservation Commission
State Environmental Commission

STATE OF NEVADA

Department of Conservation and Natural Resources

OFFICE OF THE DIRECTOR
CARSON CITY, NEVADA 89710

1985 OCT 18 PM 4:16

October 15, 1985

The Honorable Mark Andrews
United States Senator
Chairman, Select Committee on Indian Affairs
Washington, D.C. 20510

Attn: Mr. Peter Taylor

Dear Senator Andrews:

I appreciated the opportunity to appear before your Committee on October 2, to offer testimony on S.1558, a bill to settle certain claims affecting the Pyramid Lake Paiute Tribe of Nevada and for other purposes.

During the hearing, Mr. Peter Taylor, Staff Director, indicated that a two week period would be allowed to offer information to augment and supplement the record.

During the course of the hearing a question arose as to why Walker Lake was not included in the definition of the Walker River Basin in the California-Nevada Interstate Compact, which would be ratified by Title II of S.1558. I served as State Engineer of the State of Nevada during the period of time that the California-Nevada Interstate Compact was ratified by the two States in 1969, 1970 and 1971. As State Engineer I also served as Chairman of the Nevada Commission of the California-Nevada Interstate Compact Commission and as a member of the Joint Commission. Perhaps some additional background on the Interstate Compact would be helpful.

The purpose of the Interstate Water Compact is to provide for the equitable apportionment of water between the States of California and Nevada and to remove causes of present and future controversy and, further, to permit the orderly, integrated and comprehensive development, use, conservation and control of water within the Lake Tahoe, Truckee River, Carson River and Walker River Basins.

Very briefly, the basis of negotiations of the Compact included several basic principles including a recognition of existing rights and beneficial uses and a division of water supplies in proportion to water needs of the two states.

Obviously, there was some controversy and disagreement about the allocation to each State. California representatives took the position that if all the water flowing into Walker Lake were exempt from development of water supplies in California that there would be no potential or possibility of development of additional supplies.

The thirty-five percent (35%) allocated to California was considered reasonable and the very minimum that would satisfy the State of California. Conversely, the sixty-five (65%) allocated to Nevada on the Walker River Stream system was considered the optimum that could be obtained either through negotiations or a potential interstate lawsuit between Nevada and California.

The Compact also provides that each State shall have jurisdiction to determine, pursuant to its own laws, the right to the use of waters allocated to the respective state.

My service as Nevada State Engineer continued into 1972, when I issued a permit to the Department of Wildlife for the unappropriated and unused waters of the Walker River Stream system. This right has been and will continue to be served out of Nevada's allocation. The right is subject to existing rights on the stream system, but that condition is inherent in all Nevada water rights administration. Exclusion of Walker Lake from the definition of the Walker river Basin will in no way impact, adversely affect or derogate the requirement to serve that right as set forth.

We remain extremely concerned that if a Compact is not consummated between the States of California and Nevada that the State and water users within the respective Basins will ultimately be faced with an interstate lawsuit. We cannot be sure or guarantee that Nevada and our water users would receive as equitable an allocation as is provided in the Water Compact. In fact, we have extreme concerns that the State of California, specifically on the Walker River Stream system, might well receive a larger, more generous allocation which, in turn, would diminish and adversely affect the flows across the Nevada stateline which are, and will continue to be, available to satisfy demands in our State if the Compact is ratified.

Another consideration of omitting Walker Lake from the definition of the Basin was the intrastate streams and water sources tributary to Walker Lake. The Nevada members of the Compact Commission with the concurrence of the California members concluded that there was no reason to, in any way, include or involve those intrastate sources which were essentially at the terminus of the stream system in the interstate allocations.

Thank you for the opportunity to include this information in the record and I, sincerely, hope that it clarifies the question regarding the definition of the Walker River Basin, specifically as it relates to Walker Lake.

Sincerely,

Roland D. Westergard
ROLAND D. WESTERGARD
Director

RDW:vjw

ROLAND D. WESTERGARD, *Director*

Address Reply to:
Capitol Complex
Nye Bldg., 201 S. Fall Street
Carson City, Nevada 89710
Telephone (702) 885-4360

RICHARD H. BRYAN
Governor

DIVISIONS
Conservation Districts
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State Conservation Commission
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STATE OF NEVADA

Department of Conservation and Natural Resources

OFFICE OF THE DIRECTOR
CARSON CITY, NEVADA 89710

1985 OCT 18 PM 4: 16

October 15, 1985

The Honorable Mark Andrews
United States Senator
Chairman, Select Committee on Indian Affairs
Washington, D.C. 20510

Attn: Mr. Peter Taylor

Dear Senator Andrews:

It was a pleasure and a privledge to appear before your Committee on October 2, to offer testimony on S.1558, a bill to settle certain claims affecting the Pyramid Lake Paiute Tribe of Nevada and for other purposes.

During the hearing, Mr. Peter Taylor, Staff Director, indicated that a two week period would be allowed to offer information to augment and supplement the record. It is respectfully requested that the attached "Resolution" by the California-Nevada Interstate Compact Commission of the State of Nevada, dated September 10, 1985, be entered into the record and that the contents of the Resolution be included in your consideration of the bill.

Thank you for the opportunity to augment the record.

Sincerely,

ROLAND D. WESTERGARD
Director

RDW:vjw
Enclosure

STATE OF NEVADA—STATE ENGINEER'S OFFICE

I, PETER G. MORROS, State Engineer of the State of Nevada, duly appointed and qualified, having charge of the records and files of the office of the State Engineer, do hereby certify that the foregoing is a full, complete, and true copy of RESOLUTION ON FILE IN THE RECORDS OF THE NEVADA COMPACT COMMISSION LOCATED AT THE STATE ENGINEER'S OFFICE.

filed in said office on the 10TH day of SEPTEMBER, A.D., 19 85, as appears by the records and files of the office of the State Engineer of Nevada, and nothing more or less.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at the City of Carson, State of Nevada, this 15th day of OCTOBER, A.D., 1985

State Engineer

406

STATE OF NEVADA

CALIFORNIA-NEVADA INTERSTATE COMPACT COMMISSION

RESOLUTION

WHEREAS, On August 1, 1985, Nevada Senators Laxalt and Hecht introduced into the United States Senate, S.1558, a bill to settle water claims of the Pyramid Lake Paiute Tribe and to further seek ratification of the California-Nevada Interstate Compact.

WHEREAS, A companion bill, H.R. 3213, was introduced in the House of Representatives by Congressmen Vucanovich and Reid.

WHEREAS, On September 9, 1985, the California-Nevada Interstate Compact Commission of the State of Nevada met in a duly noticed public meeting.

WHEREAS, The purpose of the aforementioned meeting was, among other things, to discuss the Commission's position on the above proposed legislation; now, therefore, be it

RESOLVED BY THE California-Nevada Interstate Compact Commission of the State of Nevada, that its Chairman, State Engineer Peter G. Morros, be directed to prepare this instant resolution reaffirming the Commission's consistent position that Congressional ratification of the California-Nevada Interstate Compact is imperative and in the ultimate best interests of the State of Nevada and all other parties thereto.

DATED this 19th day of September, 1985.

Peter G. Morros

PETER G. MORROS
Chairman

Mr. TAYLOR. Thank you. We have Mr. Ted DeBraga, president of the board of directors, Truckee-Carson Irrigation District, accompanied by Lyman McConnell, project manager, Truckee-Carson Irrigation District, and Fred Girard, legal counsel.

Mr. DeBraga, I will make you the same offer I made Mr. Westergard. You're the chairman of your panel, so proceed the way you see fit.

Mr. DEBRAGA. Yes; the questions that I can answer, I will try to, and the ones that I feel are legal or otherwise, I may have Mr. Girard or Mr. McConnell answer them.

STATEMENT OF TED J DeBRAGA, PRESIDENT, BOARD OF DIRECTORS, TRUCKEE-CARSON IRRIGATION DISTRICT: ACCOMPANIED BY LYMAN McCONNELL, PROJECT MANAGER, TRUCKEE-CARSON IRRIGATION DISTRICT; AND FRED GIRARD, LEGAL COUNSEL

Mr. DEBRAGA. Mr. Chairman, members of the committee, my name is Ted DeBraga. I am a third generation water user in the Newlands Reclamation project in Nevada, and I am an elected member of the board of directors of the Truckee-Carson Irrigation District, and the current president of that board.

My farming background includes—I have been on the same ranching operation all my life. I was born and raised there. And my grandfather came to the project in 1916 and we have been there ever since.

I am going to kind of paraphrase my original oral testimony, and we do have a more detailed written testimony, that you have copies of, that we can——

Mr. TAYLOR. That will be made a part of the record as if you had presented the whole thing.

Mr. DEBRAGA. Thank you. Early in this century the United States built the Newlands Reclamation Project under the Reclamation Act of 1902. The district operates the Newlands project which is located in western Nevada in the vicinity of Fallon, NV, about 60 miles east of Reno. The project diverts water from the Truckee River to the Truckee Canal at Derby Dam. The diverted water flows through the Truckee Canal into Lahonton Reservoir where it is merged with water from the Carson River.

The project provides water to 73,002 acres of water-right land situated along the Truckee Canal and below Lahonton Reservoir, and serves approximately 2,500 water users on the project. It is a cattle-oriented area with alfalfa as the major crop that is grown.

In addition to providing storage of water for the project, Lahonton Reservoir is managed by the Division of State Parks of the State of Nevada as a State park. As a result, Lahonton Reservoir has become a major recreational and fishing facility in western Nevada. It has been said that on Memorial Day, the lake becomes the largest population center outside of the Las Vegas-Reno-Sparks metropolitan areas. There were approximately 600,000 visitor-days and 100,000 camper-days of use at Lahonton in 1984, and the trend is for 10 percent more use in 1985.

Also within the Lahonton Valley are the Stillwater Wildlife and the Carson Lake marsh areas. The valley is proud of these wetlands. They support 75 percent of the State's total duck population, and are a major stop in the Pacific flyway for the canvasback duck. Carson Lake is one of the top three breeding habitats in the United States for the white-faced ibis. Also the bald eagle utilizes the valley for winter habitat, and the white pelicans from Pyramid Lake make daily feeding flights to the valley wetlands during the spring and during the early and late summer.

The multiuses of the water for fishing, recreation, and supporting the wetlands is important because as in many areas of the west, available water supply in Nevada is limited. There is just not enough water to meet all the rights and demands of the users. Because of the limited supply of water, litigation has been prolific—in the case of the Truckee and Carson Rivers, litigation has been extensive and ongoing for over 60 years.

At the present time, the district is involved in at least five major cases with the tribe and the United States concerned with the use of the water on the project. The district was also the primary defendant in two major cases concerned with the rights and use of the waters of the Truckee and Carson Rivers which were recently concluded.

The district's litigation expenses have been, and are now a major item in our operating budget. And we have been required to forego expenditures for needed physical improvements in order to finance this litigation. There is no end in sight for litigation and there is no insurance that the final results of the litigation, even if the district wins, will satisfactorily resolve the problems.

The bottom line is that litigation has not and probably will not provide a realistic solution. Some type of settlement which involves compromises will be required. In the district's view, this litigation provides a vehicle whereby this settlement can be accomplished.

We fully support this legislation.

Thank you.

Mr. TAYLOR. Thank you.

[Mr. DeBraga's prepared statement, on behalf of the Truckee-Carson Irrigation District, follows:]

UNITED STATES SENATE

Select Committee on Indian Affairs

Mark Andrews, Chairman, North Dakota

S. 1558 Hearing

Wednesday, October 2, 1985

Testimony of Ted J deBraga, President, Board of Directors,

Truckee-Carson Irrigation District, regarding S. 1558,

a bill to settle certain claims affecting the Pyramid Lake Paiute

Indian Tribe of Nevada, and for other purposes.

Russell Building - Room 485

Washington, D. C.

Mr. Chairman and members of the committee, my name is Ted J deBraga. I am an elected member of the Board of Directors of the Truckee-Carson Irrigation District. I was first elected in 1974 and have been reelected every four (4) years since. The District operates the Newlands Project and has since 1927.

My grandfather first settled in the Fallon area in 1916 during the very early years of the Newlands Project. Since that time, my family has been involved in agriculture on the Newlands Project and I am the third of five generations of my family that relies on agriculture for its livelihood. In addition to my farming operations and my responsibilities to the water users of the Newlands Project, I serve as the District's representative on the Carson Lake Pasture Advisory Committee which is actively involved with the State of Nevada's Department of Wildlife in the operation and management of the Carson Lake Pasture and Marsh area. The committee oversees nearly $1,000,000.00 in grant funds provided by the Max C. Fleischmann Foundation for improvements to the Pasture and Wildlife habitat.

I also represent the District on the Carson-Truckee Conservancy District. The primary purpose for the Conservancy District is the acquisition and distribution of water to users to repay the construction costs associated with the Washoe Project. I am currently a member in the Greenhead Hunting Club, Ducks Unlimited, Farm Bureau and the Nevada Cattlemans' Association. In the past, I was a director and county chairman for the Agricultural Stabilization and Conservation Service for Churchill County, Nevada. I was a member of the Advisory Board to Farmers Home Administration, a member of Future Farmers of America as well as the 4-H program. In 1958, I was selected as the American Farmer for the State of Nevada.

Early in this century, the United States built the Newlands Reclamation Project pursuant to the Reclamation Act of 1902. The Newlands Project, originally known as the Truckee-Carson Project, was promoted and advertised by the U.S. Reclamation Service "as one of the best sections in the entire west for dairying, stock raising, truck gardening, sugar beet culture and general farming". The project began in 1903 -- the first construction project authorized by the U.S. Reclamation Service -- with the construction of Derby Dam on the Truckee River. At Derby Dam water is diverted from the Truckee River into the Truckee

Canal for irrigation of lands in the Fernley and Swingle Bench area as well as diversion to Lahontan Reservoir for storage. The canal serves approximately 1,500 water users and extends 31 miles to Lahontan Reservoir. The main dam and storage facility for the Newlands Project is Lahontan Dam, located on the Carson River approximately 15 miles west of Fallon, Nevada. The capacity of the reservoir is 295,000 acre-feet of water. The reservoir is used primarily for control of water that flows in the Carson River as well as the diverted flow of the Truckee River. A major consideration in diverting the flows for storage from the Truckee River is the forecasted runoff of the Carson River as well as the need for carryover storage for the next irrigation season. The project provides water to approximately 2,500 water users who own 73,002 acres of water right lands. The project is cattle oriented and the major crop grown is alfalfa. The general elevation of the project lands is about 4,000 feet above sea level. The irrigation season averages about 230 days with the frost free period averaging about 130 days.

Included within the Lahontan Valley and serviced by the Truckee-Carson Irrigation District is the Fallon Paiute Shoshone Indian Reservation and Colony which has 4,877 acres of water right land and an additional 560 acres of water right land designated in a suspended classification. Currently there are approximately 750 tribal members residing on the reservation and many are involved in the agricultural economy.

Because of the limited supply of water in Western Nevada multiple uses of the water have developed. For example, Lahontan Reservoir has become an extremely popular year-round multi-use unit of the Nevada State Park System. The Park, consisting of 41,500 acres, offers camping and picnicking around 69 miles of shoreline. Swimming, water skiing, sailing, fishing and boating are very popular as the shoreline of the reservoir has many miles of sandy beaches with trees for shelter from the hot summer sun. Anglers come to Lahontan Reservoir to test their fishing skills on the popular walleye, bass and other warm water species.

The State Parks have been improving the facilities regularly and have recently negotiated a contract for a private marina on the north shore in which $2.5 million will be spent over the next 2 years. The use at Lahontan on the Memorial Day weekend this past year was approximately 45,000 people utilizing

1,750 campsites per night as well as 800 boats per day. In 1984, the use at Lahontan included approximately 600,000 visitor days, 15,000 boat launches and 108,000 camper days. The Park has experienced an 8% annual increase in use over the past few years and expects 1985 to be approximately 8 to 10% greater than 1984. The State has invested $3.5 million dollars in recent years to improve the facilities and expects that the new marina will increase use at Lahontan tremendously. In fact, Lahontan is considered one of the major recreational facilities in Northern Nevada.

In addition to the recreational use at Lahontan, there currently exists approximately 22,000 surface acres of fishable waters throughout the Lahontan Valley including Lahontan Reservoir. This habitat supports 25 different species. Those of major interest to the Nevada Department of Wildife and sportsmen include the walleye, largemouth black bass, white bass and catfish. In the four-year period from 1980-1983, approximately 100,000 angler days were expended annually in the Lahontan Valley with an average yearly harvest of nearly one-quarter million game fish. The Department of Wildlife of the State of Nevada has within the last four years introduced the walleye into Lahontan Reservoir and anticipates that Lahontan will become the primary walleye fishery in the State of Nevada.

Just as important as the recreational uses are the wildlife areas within the Lahontan Valley -- Stillwater Wildlife Management Area and the Carson Lake Marsh Area. The Stillwater Wildlife Management Area, managed by the U.S. Fish and Wildlife Service, encompasses approximately 140,000 acres of high desert vegetation and wetlands. The Carson Lake Marsh Area, managed for the protection of wildlife and its habitat, is included within a 30,000 acre pasture and marsh area. These wetlands comprise one of the most productive wildlife habitats in Nevada. They support 75% of the State's total duck population, 50% of the State's Canada goose population and 65% of the whistling swan resource. One-third (1/3) of the total Pacific Flyway population of canvasback (redhead) ducks use the Stillwater wetlands for a staging area during migration periods. The primary marshes also support a large percentage of nongame resources. For example, Carson Lake provides habitat for the largest of the top three breeding populations in the United States of white-faced ibis -- considered for listing under the Endangered Species Act. In addition, 25% of our statewide rare and endangered bald eagle population utilize Lahontan Valley wetlands as winter habitat. Surprisingly, the Anaho Island white pelican colony at Pyramid Lake, which makes up 14% of the total continental population, makes daily feeding flights to Lahontan Valley wetlands during the spring and early summer and again in August and September. Therefore, the fisheries resources supported by these wetlands are essential to the pelicans well-being and ultimate survival.

In addition to supporting various species of wildlife, the Lahontan Valley is a primary waterfowl hunting area in which 25,000 hunter use days are accounted for annually during the duck and waterfowl hunting seasons. The Nevada Department of Wildlife, together with the Irrigation District, is in the process of expending approximately $1,000,000.00 obatined from the Fleischmann Foundation, to improve the Carson Lake wetlands area for better management and control of the water resource that is available as a result of the irrigation project existing in the Valley. Currently, a contract has been let to construct three (3) bird observation towers for bird watching enthusiasts.

Beyond the value of the irrigation project to the economy and livelihood of the people living within the project boundaries, the Lahontan Valley is important to the people of Northern Nevada for recreational use; waterfowl hunting; fishing; and its wildlife habitat in the valued wetlands of Stillwater and Carson Lake.

As in many areas of the West, the available water supply is limited. In Nevada the average precipitation is less than any other state in the union. The Lahontan Valley only receives about 5 inches of rainfall annually. As can be seen there is just not enough water to meet all the rights and demands of the users. This has generated litigation which in the case of the Truckee and Carson Rivers has been extensive and on-going for sixty years. At the present time, the District is actively involved in at least five major cases with the Tribe and the United States concerned with the use of water on the Project. The District was also the primary defendant in two major cases concerned with rights to the use of the waters of the Truckee and Carson Rivers which were recently concluded, Nevada v. United States, 103 S. Ct. 2906 (1983) and United States v. Alpine Land & Reservoir Co., 697 F. 2d 851 (9th Cir.) cert. denied 104 S. Ct. 193 (1983). The District's litigation expenses have been and are now a major item in our operating budget, and we have been required to forego expenditures for needed physical improvements in order to finance this litigation. There is no end in sight to the litigation and there is no assurance that the final results of the litigation, even if the District wins, will satisfactorily resolve the problems. The bottom line is that litigation has not and probably will not provide a realistic solution. Some type of settlement which involves compromises will be required. In the District's view, this legislation provides the vehicle whereby this settlement can be accomplished.

The major items within this legislation that are important to the District are:

the dismissal of all lawsuits;
the establishment of an operating criteria consistent with State law that is reasonable and workable;
the protection of the wildlife and wetlands within the Lahontan Valley;
protection of operation and maintenance charges in accordance with State law;
and, the cancellation of all repayment obligations.

The District currently owes to the United States through the Department of Interior, Bureau of Reclamation, the total sum of $1,475,737.93. This amount is being repaid under three contracts, Ilr-93-$67,778.22; 7-07-20-W0004 - $1,191,897.47, and 7-07-20-W0097 - $216,062.24. The District has requested additional funds in the approximate amount of $250,000.00 for repairs to the outlet structure of Lahontan Dam. That contract has been approved but has not been executed at this time.

The District fully supports the passage of this legislation as a resolution of the many disputes that have continued for so long.

Thank you.

Mr. Taylor. Mr. Girard or Mr. McConnell, do you have anything you'd like to add?

Mr. McConnell. No; I don't have any statement to make. I would be willing to answer any questions that may be directed though.

Mr. Taylor. Fine.

Ms. Zell. What benefits does the Truckee-Carson Irrigation District expect to realize should a settlement be achieved, and what would the district be contributing to the settlement in exchange for such benefits?

Mr. DeBraga. I would have to say that the litigation has been very costly to the irrigation district. If we can get out from under that, that would definitely be a burden lifted off of our shoulders. There is a vehicle in here for an OCAP to be developed by the Secretary and the district, and agreed to by the State and the tribe, whereby we feel a workable OCAP for the project.

Also there is a provision that the wetlands be protected, which is very important to the irrigation district also, since we derive revenue off of the marsh areas and wetlands from hunting and also from pasture usages, which is very important. To get out from under the obligation of the repayment obligations that the district owes to the Federal Government, approximately $1.5 million, I think these would be the benefits that the district would receive.

On the other side of the coin, I think the district would be giving up the winter hydropower lawsuit against the United States. The district used to be allowed to divert water for winter hydropower production which was revenue that the district received.

In 1968 there was what was called the nine-point program, that the farmers on the project voted on, agreed to, and that amounted to cutting out the winter power, reduce demand of water to 406,000. There was to be some R&D work done on the project, which is part of this $1.5 million also.

The bill calls for acquisitions of our water rights, which was a very strong issue that the irrigation district had some real problems with, that is agreeing to acquisition of our water rights by the Secretary. We agreed to those acquisitions only if the O&M charges are paid on them so that we—in other words, we have 73,000 acres now. If we drop down to 50,000 acres, that same 50,000 acres is going to be paying the same charges, operating charges virtually as the 73,000. So, we have to keep our project viable.

Our project is a small, farmer-owned operation. There are no large corporate farms on our project. The average size of a farm probably averages in the neighborhood of approximately 40 acres per farm, per water-right owner. That would be average.

So, those would be some of the concessions and some of the benefits that the district would receive from this bill.

Ms. Zell. Given the size of the farms in your irrigation district, why is TCID's—why are you seeking to have your repayment obligation forgiven, and what does the United States get in exchange for the forgiveness of that debt?

Mr. DeBraga. Well, as I indicated before, I think we were promised an R&B program prior, and some of these funds were part of those funds. The district is now obligated to pay. Our repayment ability on the district right now is maxed out according to the latest Bureau of Reclamation's studies. They are having another one going on now to establish another repayment ability for the district. But as I understand, it is probably going to show up worse than the one that was done 4 or 5 years ago.

And we want to do some of this work. If we were out from under that obligation, we can take some of this money and do some R&B work on the project on our own. But right now, we don't have those funds to do it.

Ms. **Zell**. And what is the basis for seeking exemption from the Reclamation Reform Act?

Mr. **DeBraga**. I will let Mr. McConnell answer that one.

Mr. **McConnell**. My name is Lyman McConnell. I am project manager of the Truckee-Carson Irrigation District. Can I elaborate a little bit on Mr. DeBraga's prior comment with regard to the district's repayment ability?

Ms. **Zell**. Certainly.

Mr. **McConnell**. Currently our budget situation is in such a status that as Mr. Broadbent indicated earlier, we are close to what you might consider bankrupt. Our budget this year is overdrafted by at least $600,000 on projected expenses. The district has, over the last few years, utilized all reserves that were available.

We currently owe to the United States only $67,000, approximately, on the repayment of the original construction charges. The $1.5 million that the district owes is made up of that $67,000 together with another $1.4 million, or thereabouts, in two repayment obligations for rehabilitation and betterment that have occurred in the last 10 to 12 years. They are not part of the original construction charges. They were rehabilitation and betterment programs on the Truckee Canal. One was to repair a tunnel which was in dire need of repair, the other was utilized for a check structure on the Truckee Canal in the Hazen area.

Those two particular items were items that were considered originally in the program that Mr. DeBraga referred to. And that is the program that was negotiated between the U.S. Government and the district back in the mid- to late-1960's, and it was approved by the water-right holders in 1968. That particular program provided that the district would relinquish its right to divert water and release water for generation of power during the wintertime, which was not precluded by any particular court decrees at that time, and had been the practice of the district in the past.

In addition, the district was to release to the Forest Service a parcel of land at Lake Tahoe consisting of 64 acres. Both, the winter power and the 64-acre tract, provided revenues to the district which have been lost. The Secretary of the Interior, apparently as a result of the formation of the Pyramid Lake task force, did not implement that agreement for one reason or another.

However, the district had already implemented its part of the agreement and has lost revenues as a result. In addition, that program provided for $3 million worth of rehabilitation work by the Federal Government on the dams and the Truckee Canal, together with a $1.5 million rehabilitation program on the canals and drains within the district, which was to be shared 50–50 by the district.

Therefore, the $1.4 million that is asked to be forgiven, in addition to the $67,000 on the original construction payment, is something that we agreed with the Federal Government years ago for and was never implemented by the Federal Government. And, that is why that is in this legislation.

The revenues that we have lost from the cessation of diversion of water for Winter power is the subject of a lawsuit in the court of claims which we are willing to dismiss in this legislation. So we feel that the forgiveness of the debt is an equitable provision at the least.

With regard to your next question on the reclamation reform exemption, as I indicated, we only owe approximately $67,000 on the original construction contract. We pay approximately $9,500 a year on that repayment. And so, I don't think that the Federal Government is relieving the district of a large liability or a large obligation. However, there are burdens within the reclamation reform which require additional paperwork for the district and the Federal Government.

And as indicated, the district is a small water-user district. It was formed in the early 1900's and acreages were limited. Currently there is no one on the project that is not in compliance with the Reclamation Reform Act. There are approximately six individuals who have opted for the new provisions. The remainder of the water users on the project are in compliance with the previous reclamation law. Those six individuals are considered in excess of the acreage limitation provision. However, the total acreage that is considered excess is only approximately 800 acres. Those six individuals are in the process of filing for an exemption from the Reclamation Reform Act.

However, if the legislation is approved and the repayment contract on the construction charges is forgiven, I think that will then provide an exemption from the Reclamation Reform Act in and of itself. So those two provisions are related and tied together.

The additional amounts that we pay on the R&B repayment contracts are approximately $49,000 annually. We are in the process, because of the status of our budget, of borrowing emergency funds from the Federal Government, which have been approved, in the neighborhood of $250,000 to $350,000, to which Mr. DeBraga referred.

We have been told by Bureau of Reclamation officials that our repayment ability is at its maximum level at this time, which means that we cannot charge the water users any additional amounts. That does create a problem for us because our budget continues to rise as costs continue to rise.

I don't know what else you might want to know with regard to those particular questions. If I have not responded adequately, please clarify it for me. I am sorry to have taken so much time.

Ms. **Zell**. No; that is fine. Under what operating criteria is the district currently operating?

Mr. **DeBraga**. Almost monthly we receive an interim operating criteria from the bureau that we are operating under.

Mr. **McConnell**. If I may, I would like to expand on that. The district went to the Federal court and the Federal Water Master earlier this year to allow diversions from the Truckee River to Lahonton Dam.

That diversion was based upon an operating procedure for filling Lahonton Reservoir by July 1. That procedure and criteria was approved by the Federal Water Master and the Federal district court in Nevada. Prior to that time, we were working on an interim operating procedure with the Federal Government, of which there was an injunction by the Gesell court precluding diversions from the Truckee River. The judge had signed an injunction against any diversions from the Truckee River as of September 27, I believe, of 1984.

It became important to the district to start diversions for the 1985 irrigation season because the weather had been dry and the reservoir was quite low. We received an order from the Orr Ditch court to allow diversions under the particular diversion criteria that we had presented to the Water Master. That criteria is not significantly different from the interim criteria that have been submitted to us by the Bureau of Reclamation as far as the diversion schedules are concerned. We have met both of those particular criteria, and that is how we are currently operating at the present time.

There is an order by the judge in the *Orr Ditch* case for the Federal Government to work out reasonable and workable operating procedures with the Federal Water Master, and submit it perhaps to the Federal court for approval.

Ms. **Zell**. The following questions were submitted by Senator Hecht's office. Approximately how much money has TCID repaid to the Federal Government over the years for Federal construction on the Newlands project?

Mr. **DeBraga**. Approximately $3.5 million.

Mr. **McConnell**. You have to realize it's an old project, and it didn't cost as much to build in those days.

Mr. **Girard**. One of the things that is being accomplished by this agreement is the negotiation subsequently of an overall operating critera with TCID and the United States, and also coordination of the reservoirs with TCID, the tribe, and everyone else who has water rights in existing reservoirs.

Now, one of the things that is very important to TCID in agreeing to make changes, if we do, on existing rights which we have is knowing that the water is going to be available—at least if it is in the river. Unless we have a compact, we are not assured of the supply that is going to be available when we try to negotiate these operating criteria and these other provisions.

So, it is essential to know, with finality, that California has so much water and Nevada has so much water, and we are dealing with something that we can compute through models and operations studies and that kind of thing.

So, from a physical standpoint in negotiating the coordination of reservoirs—and there are a number of them; Stampede Reservoir, Lake Tahoe, Lahonton Reservoir, Boca Reservoir, and Donner Lake, all of those—which involve two rivers, the Carson and the Truckee, we really want to know what is California's share and what is our share. And the only way that that can be established is by approval of a compact or by an interstate suit. And I don't think anyone wants an interstate suit.

Ms. ZELL. As a member or a participant in these contract negotiations, do you recall at the time of the negotiations how it was anticipated that these allocations would treat future claims that were either not yet known at the time of the negotiations were going on, or were at least possibly anticipated as a result of litigation that was ongoing at that time?

Mr. GIRARD. It may be a little bit different on different rivers. On the Truckee River and Lake Tahoe—Lake Tahoe is a tributary into the Truckee—the basic allocation assumption that was made, and essentially this controlled it, was that we would recognize existing uses in California, which were almost entirely domestic use at Lake Tahoe and in the Truckee River watershed—very little agriculture—and we then estimated an amount that would be used for the future residential development around the lake and the river. And that amount was allocated to California, in essence, for use within the Truckee River basin in California and in the Lake Tahoe basin in California and Nevada. The rest was allocated to Nevada. Now, there were refinements to that, but that is basically how it was arrived at. And it is a relatively insignificant amount to California compared to the overall.

The amount that was allocated to Nevada substantially exceeds the amount allocated to California. I don't want to be held exactly to the figures, but of the annual flow of the Truckee River, which approximates on the average say a half a million acre-feet at the State line, about 50,000 acre-feet maximum is allocated to California, and if you take into account the actual consumptive use it would be less. Some of the water that is allocated to California does get back into the river.

So, the vast amount of the water in the Truckee River was allocated to Nevada; 90 percent probably. That water is available for future claims in Nevada.

Now, on the Walker River—which is, I guess, the other river that may be involved in these proceedings—what we tried to do was recognize existing uses in both States initially. There is kind of a principle that's been followed in the compact cases in language of the Supreme Court decisions that say that the most important thing is to protect existing economies and existing uses in compacts. We tried to do that in both States.

Now, on the Walker River Indian Reservation, they have decreed rights under the decree. I think it is C-125. They have certain decreed rights. The water that was covered by the right was recognized and allocated to the State of Nevada.

I don't believe decree C-125 provided any water for Webber Reservoir, which was subsequent to the date of that decree, or for any direct diversion rights out of the Walker River for the Indian reservation.

My recollection is that somewhere around 22,000 or 23,000 acre feet were allocated to Nevada for those uses. California's water rights cannot be determined with certainty the way Nevada's can. Almost all of Nevada's uses, with the exception of the Walker River Tribe, are based on decrees or applications that are filed with the State engineer, where a certain specified amount is set forth and you can tell what Nevada's existing uses and rights are.

California is different. California—the majority of the rights on the Walker River in California were probably riparian. And riparian rights in California do not have to be set forth, and they are not necessarily a matter of record. But even if you're not using the water, you still have the right. What we did was try to estimate the amount of the existing uses in California that were not covered in decree C-125, again which are relatively insignificant compared to the amounts of water being used in Nevada—allocate that to California. Then the remaining water was identified as unused water and, if my recollection is right, 35 percent of that water was allocated to California and 65 percent to Nevada. That water would be available for future claims in Nevada.

Realistically, on the Walker River, in the absence of storage, this unused water cannot be used for irrigation or other similar uses. That water is available during the spring runoff, and it only occurs, if my recollection is correct, maybe 3 or 4 weeks in the year. That is when it flows. And if you don't capture it and store it, you don't use it. It goes into Walker Lake.

So, from a practical standpoint, I think any priority after 1933, without substantial upstream storage or carryover storage, isn't going to be used for irrigation to any significant degree. And I think that was taken into account in the negotiations, at least by California, in giving such a large allocation to Nevada. There was just really no way to develop it. It just occurs at that time.

On the Carson River, there is somewhat the same situation as in the Walker. Existing uses were recognized. I don't think there's anything significantly inconsistent with the subsequently entered *Alpine* decree and the compact. The *Alpine* decree allocated to California users basically the same amount of water for existing uses as they would be entitled to use under the compact, with one exception.

In the compact, it was provided that a small area in California—I forget the name of it—needed some supplemental storage. And it was agreed that they could develop up to 2,000 acre-feet of supplemental storage for use adverse to Lahonton Reservoir. And TCID agreed to that at that time.

So, all in all, on the allocation, I think Nevada came out very well. And there were reasons, and sound reasons, for those provisions. And on the Walker River, incidentally, as far as the negotiations that were directed to Walker Lake and the Walker River Indians, a representative of the Bureau of Indian Affairs actively participated in the negotiations, submitted drafts of proposed provisions, which were, in fact, considered by the drafting committee—of which I was one of the three members, the other being Mr. Johnson, who is here, and a fellow, Mr. McMasters, who was the Regional Solicitor of the Department of the Interior in Salt Lake City—and I believe the Commission and the drafting committee pretty well accepted what the Bureau of Indian Affairs recommended. And that is basically the history of the compact.

Mr. TAYLOR. It is my understanding—under the statutes that authorized the negotiations of the California and Nevada Interstate Compact—there was supposed to be a Federal representative present in the negotiations. And I think the records are very clear that there was.

Mr. GIRARD. There was a Federal representative present at all of the negotiations. There was also a Federal attorney from the Solicitor's Office who was one of the three members of the drafting committee who drafted, I believe, every sentence in that compact, and he actively participated. In fact, many of the meetings of the drafting committee were held in his office in Salt Lake City.

Mr. TAYLOR. Well, the next part of it is, under that statute, that representative was supposed to file a report with the President and the Congress at the conclusion of the negotiations. To my knowledge, that never occurred.

Mr. GIRARD. I couldn't answer that.

Mr. TAYLOR. You don't know whether that occurred?

Mr. GIRARD. I don't know whether it occurred or not.

Mr. TAYLOR. I think it didn't——

Mr. GIRARD. Probably the reason it didn't, if it didn't, was right at the end there was a substitution of Federal representatives. Mr. Newell was the Federal representative through a large part of the negotiations. Certainly, I think, during all of the crucial negotiations. I don't recall when Mr. Newell died, or he became ill and died subsequently, but a fellow named Ritter came in at the very end. So, maybe that was the reason. I don't know.

Mr. TAYLOR. One of the concerns that was expressed in the two letters that we referred to earlier this morning, by the two Secretaries of the Interior, was the fact that the Federal representative on the commission would be ex officio and without voting capabilities.

During the negotiations, did the Federal representatives raise that as an issue?

Mr. GIRARD. To my recollection, it was never suggested that the Federal representative be a voting member by anyone. I am sure if it had been, he probably would have been. It wasn't really an issue that was presented. Basically what we did was follow the format used in many other compacts where that situation occurred. I don't believe it was a point of negotiations or a suggested point of negotiation. If it had been, I don't think we'd have really had a problem with it.

Of course it went through the legislatures on that basis and that's the way it was. But to the best of my recollection it wasn't something that was urged and rejected.

A principal reason in those earlier letters—if I can just address them a minute—as to why the compact was objected to by the Federal interests was that the Indians were making, particularly at Pyramid Lake, Winters right claims with an 1859 priority, which would be adversely affected by the compact. The Federal interests argued that the Indians should have the right to litigate those claims. They have, in the interim, litigated those claims. That has been decided against them, that is over. So, that is no longer a paramount reason why the compact should be objected to by the Federal Government.

Mr. TAYLOR. In your opinion, would it be possible to put amendments in this legislation that in some way could establish a Federal representative with a voting capability, without reopening the compact that has been negotiated?

Mr. **Girard.** Well, I think they—I don't want to claim to be a legislative expert, I am not, but I suspect it would have to be approved by the legislature. There would have to be a bill that would somehow go into the Legislature of the State of California, the Legislature of the State of Nevada and be approved.

Mr. **Taylor.** If it had that limited purpose, in your opinion, would that cause the compact to just be reopened by both State legislatures or either one?

Mr. **Girard.** I don't have——

Mr. **Taylor.** You have no opinion?

Mr. **Girard.** No; I have been gone from State employment about 20 years.

Mr. **Taylor.** I don't think we have any more questions at this time. I am sure that we will have some followup questions.

Mr. **Girard.** Thank you.

Mr. **DeBraga.** Mr. Chairman, if you have written followup questions, I would request they be directed to Mr. Girard's office. We can supply you with that address.

Mr. **Taylor.** Thank you very much.

Mr. **McConnell.** Thank you, sir.

Mr. **Taylor.** Next we have Mr. Joe Gremban, chairman of the board, chief executive officer and president of Sierra Pacific Power Co., accompanied by Robert Firth, manager, gas and water engineering planning, Sierra Pacific; Joe Burns, consulting civil engineer; and Gordon Depaoli, legal counsel.

Mr. **Gremban.** Mr. Chairman, I have previously submitted a prepared statement, and I would just like to summarize the pertinent points within that statement.

Mr. **Taylor.** Your statement will be made a part of the record as if read in full.

Mr. **Gremban.** Thank you.

STATEMENT OF JOE L. GREMBAN, CHAIRMAN OF THE BOARD, CHIEF EXECUTIVE OFFICER AND PRESIDENT, SIERRA PACIFIC POWER CO., ACCOMPANIED BY ROBERT E. FIRTH, MANAGER, GAS AND WATER ENGINEERING PLANNING; JOE BURNS, CONSULTING CIVIL ENGINEER; AND GORDON DEPAOLI, LEGAL COUNSEL

Mr. **Gremban.** My name is Joe L. Gremban. I'm the chairman of the board, chief executive officer, and president of Sierra Pacific Power Co. My testimony today is directed to the bill as it would read if it included the changes sent by representatives of the various interested parties through the Nevada congressional delegation on September 13, 1985.

Sierra Pacific Power Co. is a Nevada corporation. It is a public utility providing electric and gas service in parts of Nevada and California, and is involved in the purchase, transmission, distribution, and sale of water in the cities of Reno and Sparks, NV, and in portions of Washoe County, NV.

After nearly 15 years of continuous litigation, a reliable supply of municipal and industrial water for the cities of Reno and Sparks and Washoe County is not assured. The cutthroat trout and cui-ui fish remain listed as threatened and endangered, respectively.

The manner in which the Newlands project will be operated remains undetermined, and additional, inconclusive, and expensive litigation is probable. This bill should be enacted because it lays a new foundation on which the parties will build a final solution to the longstanding and unresolved conflicts to water from the Truckee River.

That foundation has at least five essential elements which are found in sections 104, 105, 106, 108, and 111 of this legislation. Without enactment of this bill, any further negotiated resolution of these problems, we feel, will be impossible.

As the public utility providing water to the cities of Reno and Sparks and to portions of Washoe County, Sierra Pacific has a vital interest in making certain that their water supply is reliable now and in the future. Those communities will not have such a water supply without the availability of additional stored water which may be carried over for use during drought periods.

In the last 10 years, the Truckee River annual flows have varied from 35 percent of normal to over 300 percent of normal. The 1976–77 drought experience on Truckee River illustrates the need for storage to hold water during large runoff years, thereby providing water that can be beneficially used during dry years.

During the drought of 1976–77, outflow to the Truckee River from Lake Tahoe ceased by mid-September 1977. In addition, the available storage in Boca Reservoir was exhausted by that same time. With no stored water available at Boca Reservoir or Lake Tahoe to sustain flows, by the end of September there was less than 15 cubic feet per second flowing in the Truckee River near Sparks.

If the Truckee River system were experiencing today the hydrologic conditions just described, the Reno-Sparks metropolitan area water supply would be precarious. Truckee River flows would be significantly smaller than the municipal and industrial demand, which must be met from riverflow.

The only remaining municipal and industrial water supply for over 150,000 people would be approximately 12,000 acre-feet of stored water from Independence Lake. This quantity of water is only 20 percent of today's annual demand.

Engineering studies demonstrate that the Truckee River water supplies during drought periods are not adequate to meet existing water rights. Therefore, at present, a commitment of almost double the water necessary for development is required in order to protect against a drought.

Section 105(b) will allow the Secretary of the Interior, subject to his agreement and the agreements of the tribe, Sierra Pacific, and the Carson-Truckee Conservancy District, to execute a contract for the sale of water from Stampede Reservoir in sufficient quantity to provide municipal and industrial water for the cities of Reno, Sparks, and Washoe County well into the future.

As noted, the Reno, Sparks, and Washoe County needs are most critical during the dry period. Upon execution of the contract, and for 10 years thereafter, this legislation allows a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre-feet, or such other amount as is agreed to by the parties.

The legislation also provides, in section 105(c), a means for protecting municipal and industrial supply when Stampede Reservoir storage is at or below 50,000 acre-feet, or such other amount as is agreed to by the parties.

The legislation also provides that beyond 10 years, and based upon agreement of the aforementioned parties, the Carson-Truckee Water Conservancy District may withdraw from Stampede storage for municipal and industrial purposes an average of 5,000 acre-feet per year, or such other amount as may be agreed to.

It will also allow the Carson-Truckee Water Conservancy District a dry period municipal and industrial supply based upon an average annual withdrawal from Stampede storage of 15,000 acre-feet, or such other amount as agreed to.

In addition, the municipal and industrial supply will be protected when Stampede storage is at or below 120,000 acre-feet, or such other amount as is agreed to by the respective parties as provided in section 105(d).

As a further protection to the water supply for the cities, this legislation provides a water made available, under subsections (b) through (g) of section 105, will not be used for the purpose of dilution of sewage fluid. That provision, in section 105(h), makes it clear that the water provided pursuant to this legislation, and to the agreements of the parties, will be part for municipal and industrial supply on which the cities and country may rely.

Sierra Pacific has agreed to changes in section 105(a)(7) which were requested by the Tahoe-Donner Public Utility District, and the American Public Power Association. Those changes are included in exhibit A, which is attached to my written testimony. Section 105(a)(7) assures Sierra Pacific that if, by agreement, it curtails the use of its Truckee River hydroelectric facilities, the losses will be offset by power from the Western Area Power Administration or by compensation.

These provisions, and others, will allow Sierra Pacific and the Carson-Truckee Water Conservancy District to enter the negotiations required by section 107 with the confidence that legislation is in place which will allow the United States to execute contracts providing for a reliable municipal and industrial water supply for the cities of Reno, Sparks, and Washoe County.

On the foundation provided by this bill, the parties will build the agreements required by section 107. These agreements will not be reached easily. However, never before has there been a Federal commitment to all interested parties to provide such significant assistance in reaching final solutions to these longstanding conflicts.

Without the enactment of this legislation, Sierra Pacific is confident that the agreements referred to in section 107, which are necessary to resolve these conflicts, will never be reached.

If this legislation is enacted, Sierra Pacific is equally confident that the requirements of section 107 can be timely satisfied. Sierra Pacific strongly recommends passage of this bill.

Thank you.

[Mr. Gremban's prepared statement, on behalf of the Sierra Pacific Power Co., follows. Testimony resumes on p. 236.]

TESTIMONY OF JOE L. GREMBAN
PRESIDENT OF SIERRA PACIFIC POWER COMPANY

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

REGARDING

S. 1558 TO SETTLE CERTAIN CLAIMS
AFFECTING THE PYRAMID LAKE PAIUTE INDIAN
TRIBE OF NEVADA AND FOR OTHER PURPOSES

WASHINGTON, D.C.

OCTOBER 2, 1985

I. INTRODUCTION

Mr. Chairman and members of the Committee my name is Joe L. Gremban. I am the Chairman of the Board, Chief Executive Officer and President of Sierra Pacific Power Company. My testimony today is directed to the Bill as it would read if it included the changes sent by representatives of the State of Nevada, Sierra Pacific Power Company, the Truckee-Carson Irrigation District, the Carson-Truckee Water Conservancy District, Washoe County and the Washoe County Water Conservation District to the Nevada Congressional delegation on September 13, 1985. For the convenience of the Committee those changes are shown on Exhibit A attached hereto.

A. Sierra Pacific Power Company.

Sierra Pacific Power Company (Sierra Pacific) is a Nevada corporation and is the successor to The Truckee River General Electric Company. It is a public utility engaged in the purchase, transmission, distribution, and sale of water in the Cities of Reno and Sparks, Nevada, and in portions of Washoe County, Nevada.

It is also engaged in the generation, purchase, transmission, distribution and sale of electric energy in the States of Nevada and California. Sierra Pacific has four hydroelectric facilities on the Truckee River in both Nevada and California. The water used to operate those facilities comes from the Truckee River.

B. Northwest Nevada - The Area Affected By This Legislation.

Northwest Nevada, the area affected by this legislation is an arid region. All facets of life and of the economy in the area are dependent upon the beneficial use of the waters of the Truckee, Carson and Walker Rivers and their tributaries. Literally billions of dollars have been expended on homes, businesses, plants, agriculture, schools, parks, playgrounds and other facilities in reliance on the water provided by those rivers.

All three rivers rise in the Sierra Nevada mountains and flow generally easterly to landlocked termini in the Nevada Desert. The Truckee River flows out of Lake Tahoe and terminates in Pyramid Lake. The Carson River flows through Lahontan Reservoir and terminates in the Carson Sink some 40 miles east of Pyramid Lake. The Walker River consists of two main branches, East and West Walker, which unite in Mason Valley and terminate in Walker Lake.

The waters of each of those rivers have been the subject of comprehensive water adjudications brought by the United States in the United States District Court for the District of Nevada. In 1913 the United States filed an action to determine the relative rights of all parties to the waters of the Truckee River in Nevada. That action, entitled United States v. Orr Water Ditch Co. et al. (Equity No. A-3), was ended with the entry of a final judgment in 1944.

The United States initiated a similar action on the Carson River in 1925. That action, entitled United States v. Alpine Land & Reservoir Co. et al., D-183-BRT was concluded in 1983. See, United States v. Alpine Land & Reservoir Co., 503 F.Supp. 877 (D.Nev. 1980), aff'd 697 F.2d 851 (9th Cir. 1983), cert. den. 104 S.C. 193 (1983).

On July 3, 1924 the United States commenced an action to quiet its title to water on the Walker River and to determine the relative rights of the parties to the suit to the waters of that river. That action, entitled United States v. Walker River Irr. Dist., No. C-125 ended in 1939. See, United States v. Walker River Irrigation District, 11 F.Supp. 158, (D.Nev. 1935); 14 F.Supp. 10 (D.Nev. 1935), aff'd in part and rev'd in part 104 F.2d 334 (9th Cir. 1939).

C. The Continuing Conflict Over Water.

Those comprehensive river adjudications have not ended the conflicts over water. This has been especially true on the Truckee River. For at least the last fifteen years the conflicts on the Truckee have been the subject of extensive study and massive litigation whose final decisions have been inconclusive. Additional litigation is underway and more is anticipated.

In the early 1970's the United States sought leave to file a complaint in the United States Supreme Court pursuant to the Court's original jurisdiction. The proposed complaint which was against the States of California and Nevada, sought a declaration of the respective rights of the states and of the

United States in the Truckee River. The purpose of the United States in seeking to institute that litigation was to perfect a prior water right against all upstream uses that would maintain Pyramid Lake at its then current level and to prevent deterioration of the Lake and the Truckee River, as the habitat for the native fish that had historically thrived in the lake. See United States v. Nevada, 412 U.S. 534 1973. On June 11, 1973 the Supreme Court denied leave to file that complaint.

Thereafter, on December 21, 1973 the United States commenced an action in the United States District Court for the District of Nevada entitled United States of America v. Truckee-Carson Irr. Dist. et al., Civil No. R2987-RCB. That action named approximately 17,000 individuals, the State of Nevada, the Truckee-Carson Irrigation District, the Cities of Reno and Sparks, Nevada, Washoe County Nevada and Sierra Pacific Power Company as defendants. In that action, the United State claimed an implied, reserved water right with a December 8, 1859 priority date to maintain and preserve Pyramid Lake and the Truckee River as a fishery.

A bifurcated trial on a single affirmative defense began on November 17, 1975 and continued intermittently until May 20, 1976. The trial court issued its decision on December 12, 1977 and an appeal was taken to the Ninth Circuit. The opinion of that court was issued on June 15, 1981 and was amended thereafter on July 10, 1981 and January 5, 1982. See United States v. Truckee-Carson Irr. Dist. 649 F.2d 1286 (9th Cir. 1981) amended 666 F.2d 351 (9th Cir. 1982).

The State of Nevada and the Truckee-Carson Irrigation District petitioned for certiorari and the Pyramid Lake Paiute Tribe cross-petitioned for certiorari. Certiorari was granted by the Supreme Court on October 12, 1982 and the case was argued and submitted on April 27, 1983. On June 24, 1983 the Supreme Court of the United States entered its decision which is Nevada v. United States, 463 U.S. 110 (1983).

The case was remanded to the District Court for further proceedings in conformity with the Supreme Court's opinion. Before that court acted on the remand order, however, the Tribe moved to amend its original complaint. On September 20, 1985, the District Court denied the Tribe's motion to amend and dismissed the Tribe's complaint in its entirety. The case will now proceed on the United States' claim for waters for the Stillwater Wildlife Refuge, the Toiyabe National Forest and other waterholes in Nevada.

There have been a number of other related actions which include Pyramid Lake Tribe v. Morton, 354 F.Supp. 252 (D.D.C 1973). There the Tribe challenged the operating criteria for the Newlands Project developed by the Secretary of the Interior. In Truckee-Carson Irrigation District v. Secretary, Civ. No. R-74-34-BRT (D.Nev. 1983), aff'd 742 F.2d 527 (9th Cir. 1984), cert. den. 53 U.S.L.W. 3867 (June 11, 1985), the courts upheld the Secretary of the Interior's decision to terminate the 1926 contract permitting the Truckee-Carson Irrigation District to operate the Newlands project. Another case is Carson-Truckee Water Conservancy District v. Watt, 537 F.Supp. 106, 549 F.Supp. 704 (D.Nev. 1982), aff'd 741 F.2d 257 (9th Cir. 1984), cert. den. 53 U.S.L.W. 368 (March 26, 1985) where the courts upheld the Secretary's decision to utilize water from Stampede Reservoir located on the Little Truckee River in California to increase the spawning flows for the Pyramid Lake fishery.

The Pyramid Lake Paiute Tribe has also filed an action in the United States District Court for the Eastern District of California entitled Pyramid Lake Paiute Tribe of Indians Plaintiff v. State of California et al., Defendants, Civil No. S-81-378-RAR. There the Tribe seeks to determine the nature and extent of its reserved water rights relative to the rights of present and future water users in the State of California. There have been a number of other actions and proceedings involving these matters including actions in the Court of Claims and proceedings before the Federal Energy Regulatory Commission.

The costs of this litigation to the parties and to the judicial system has been staggering. Much of the litigation remains unresolved and as noted in Section 101 of this legislation will continue. More importantly, after nearly fifteen years of continuous litigation, a reliable supply of municipal and industrial water for the cities of Reno and Sparks and Washoe County is not assured, the cutthroat trout and cui-ui fish remained listed as threatened and endangered respectively, the manner in which the Newlands Project will be operated remains undetermined and additional inconclusive and expensive litigation is probable.

This Bill should be enacted because it lays a new foundation on which the parties will build a final solution to the long-standing and unresolved conflicts to water from the Truckee River. That foundation has at least five essential elements which are found in Sections 104, 105, 106, 108 and 111 of this legislation. Without enactment of this Bill, any further negotiated resolution of these problems will be impossible.

II. THE FOUNDATION FOR A NEGOTIATED SETTLEMENT

A. Introduction.

The elements necessary to a negotiated settlement of these long-standing problems involve Pyramid Lake and its fishery, the municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada, the operation and improvement of the Newlands Project, assurances to the State of Nevada that the wasteful experiences of the past fifteen years will not be repeated on other rivers and the funds and commitment to implement the programs which need to be undertaken. I will touch only briefly on those elements in which the Pyramid Lake Paiute Tribe, the Truckee-Carson Irrigation District and the State of Nevada are most interested. I will consider in some detail the municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada. It is that element with which Sierra Pacific is most directly concerned. However, Sierra Pacific has always been concerned with the interests of all of the other parties, including those of Pyramid Lake Paiute Tribe. It has taken the lead in developing a computer model which is used as a tool to analyze various operating criteria for the entire Truckee River. That model has been used to search for ways to meet the needs of all interested parties.

B. The Provisions Of The Legislation Concerning Pyramid Lake.

In Section 104 of this Bill, the United States commits itself to maintaining average levels for Pyramid Lake. That has been one of the objectives sought by the Tribe in much of the litigation described above and is to be used for the enhancement of the Pyramid Lake fish resources, wildlife conservation, outdoor recreation and economic development. In Section 106 of the Bill, the United States commits itself to the formulation and implementation of a program to recover the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as endangered or threatened. It commits itself to restore to the "maximum extent practicable" natural spawning of the Lahontan cutthroat trout and cui-ui in the Lower Truckee River. Those too have been objectives of the Tribe in much of the litigation which has taken place to date.

There are other provisions in the Bill pertaining to Pyramid Lake. Suffice it to say that the Pyramid Lake Paiute Tribe may approach the negotiations which will be needed to conclude the conflicts on the Truckee River with the confidence that the United States is committed to protect its Lake and fish resources.

C. The Provisions Of The Legislation Concerning The Municipal Water Supply For The Cities Of Reno And Sparks, Nevada And Washoe County, Nevada.

As the public utility providing water to the Cities of Reno and Sparks, Nevada and to portions of Washoe County, Nevada, Sierra Pacific has a vital interest in making certain that their water supply is reliable now and in the future. Those communities will not have such a water supply without the availability of additional stored water which may be carried over for use during drought periods. In the last ten years the Truckee River annual flows have varied from 35% of normal to over 300% of normal. The 1976-1977 drought experience on the Truckee River illustrates the need for storage to hold water during large runoff years thereby providing water than can be beneficially used during dry years.

The drought of 1976 and 1977 resulted in the level of Lake Tahoe dropping to a low elevation (6223.75 feet) by August 1, 1977. On August 1, 1977 the maximum possible withdrawal of 110 cfs was being made from Lake Tahoe and 280 cfs was being released from Boca Reservoir on the Little Truckee River in California. By the end of August, only 20 cfs could be withdrawn from Lake Tahoe and by mid-September the Lake level had dropped below 6223.0 feet and outflow to the Truckee River ceased.

Boca Reservoir releases were increased to approximately 340 cfs. This release rate exhausted available Boca Reservoir water by mid-September. With no stored water available at Boca

Reservoir or Lake Tahoe to sustain flows, by the end of September there was less than 15 cfs flowing in the Truckee River near Sparks, Nevada.

If the Truckee River system were experiencing today, October, 1985, the hydrologic conditions just described, the Reno-Sparks metropolitan area water supply would be precarious. Truckee River flows would be significantly smaller than the municipal and industrial demand which must be met from river flow. The only remaining municipal and industrial water supply for over 150,000 people would be approximately 12,000 acre feet of stored water from Independence Lake. This quantity of water is only 20% of today's annual demand.

Historically, Lake Tahoe and other reservoirs have been reduced to levels which in about one year in eight will not fully support water rights in Reno, Sparks and Washoe County. Most of these years were concentrated in the early 1930's. It can be expected that such drought conditions will occur in the future with similar frequency.

Engineering studies demonstrate that Truckee River water supplies during drought periods are not adequate to meet existing water rights. Purchased irrigation rights will provide a yield of only 58% of their face amount for municipal and industrial use. Therefore at present a commitment of almost double the water necessary for a development is required in order to protect against a drought. Clearly, then if the Cities of Reno and Sparks and Washoe County, Nevada are to have a reliable water supply now and in the future additional upstream storage must be made available to protect that supply. This Bill will make that possible.

Section 105(b) will allow the Secretary of the Interior, subject to his agreement and the agreement of the Tribe, Sierra Pacific and the Carson-Truckee Conservancy District to execute a contract for the sale of water from Stampede Reservoir in sufficient quantity to provide municipal and industrial water for the cities of Reno and Sparks and Washoe County, Nevada well into the future. As noted, the Reno, Sparks and Washoe County needs are most critical during a dry period. Upon execution of the contract and for ten (10) years thereafter, this legislation allows a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific and the Carson-Truckee Conservancy District. The legislation also provides a means for protecting that municipal and industrial supply when Stampede Reservoir storage is at or below 50,000 acre feet or such other amount as is agreed to by the Secretary, Tribe, Sierra Pacific and the Carson-Truckee Water Conservancy District. See, Section 105(c).

The legislation provides that beyond ten years and based upon a projected demand to be defined by the Secretary, the Tribe, Sierra Pacific and the Carson-Truckee Water Conservancy District, the Carson-Truckee Water Conservancy District may withdraw from Stampede storage for municipal and industrial purposes an average of 5,000 acre feet per year or such other amount as is agreed to by the same parties. It will also allow the Carson-Truckee Water Conservancy District a dry period municipal and industrial supply based upon an average annual withdrawal from Stampede storage of 15,000 acre feet or such other amount as agreed to by the respective parties. In addition, the municipal and industrial supply will be protected when Stampede storage is at or below 120,000 acre feet or such other amount as is agreed to by the respective parties. See, Section 105(d).

To the extent that Stampede Reservoir water is not required for the Pyramid Lake fish resources, the Secretary is authorized to execute a contract for the sale of water in addition to the supplies which have been described above. Finally, if the parties agree and storage is available, Sierra Pacific will have the right to accumulate its privately owned stored water in Stampede Reservoir. See, Section 105(e) and (g).

As a further protection to the water supply for the cities, this legislation provides that water made available under subsections (b) through (g) of Section 105 will not be used for the purpose of dilution of sewage effluent. That provision, in Section 105(h), makes it clear that the water provided pursuant to this legislation and the agreements of the parties will be part of the municipal and industrial supply on which the Cities and County may rely.

Section 105(a)(7) also allows the Secretary to withdraw from commercial sale all or any portion of Washoe Project power for any person or entity who becomes a party to the agreements concerning utilization of available reservoir storage referred to in Section 107(a)(6). This provision assures Sierra Pacific that if by agreement it curtails the use of its Truckee River hydroelectric facilities the losses will be offset.

These provisions and others will allow Sierra Pacific and the Carson-Truckee Water Conservancy District to enter the negotiations required by Section 107 with the confidence that legislation is in place which will allow the United States to execute contracts providing for a reliable municipal and industrial water supply for the Cities of Reno and Sparks and Washoe County, Nevada.

D. The Provisions Of The Legislation Concerning The Operation And Improvement Of The Newlands Project.

Section 111 of the legislation provides a forum for determining the operating criteria for the Newlands Project. Section 105(a)(3) allows the Secretary to enter into agreements with the Truckee-Carson Irrigation District for the "rehabilitation, betterment and operational improvement" of the Newlands Project and to include a component for the "improvement of the Stillwater Wildlife Management Area and the Carson Lake Pasture to the extent such improvement is necessary to mitigate fully the effects of the rehabilitation, betterment and operational improvement of the Newlands Project."

The Truckee-Carson Irrigation District is also assured that if any lands or interests are acquired by the United States or that if any of the agreements entered into under this Bill provide for the transfer of Newlands Project water rights to non-Newlands' Project lands or uses, the United States will pay to the Truckee-Carson Irrigation District operation, maintenance and other charges that would have been assessed if the acquisition or transfer had not occurred. See, Section 105(i). Thus, the viability of the Project will continue even if lands and interests are acquired under other provisions of the legislation.

There are other provisions in the Bill which relate to the Newlands Project and the Truckee-Carson Irrigation District. All of the provisions assure the Truckee-Carson Irrigation District that the United States has made a major commitment to the Project and the District and that it may negotiate with that in mind.

E. Provisions In The Legislation Of Concern The State of Nevada.

The State of Nevada is of course concerned with all of the provisions of this Bill, including those which will benefit Pyramid Lake, the Cities of Reno and Sparks and Washoe County and the Newlands Project. However, it has an even broader concern, that of ratification of the California-Nevada Interstate Compact.

The State of Nevada has been a party to much of the litigation described above. If this Bill is enacted and the requirements of Section 107 are satisfied Nevada will contribute $8,000,000 to the Pyramid Lake Settlement Fund and thus to the carrying out of the purposes of Title I of the Bill. It cannot be expected to make that contribution unless it is assured that the experiences and mistakes on the Truckee River over the last fifteen years will not be repeated on the Carson and Walker Rivers.

In order to avoid litigation in the United States Supreme Court Nevada and California have chosen to apportion between them the water of the Truckee, Carson and Walker Rivers by interstate compact. After 13 years of negotiations, the proposed compact was adopted by the State of California in 1970, and by the State of Nevada in 1971. Since 1971, both states have adhered to the provisions of the Compact. See, United States v. Nevada, 412 U.S. 534, 537-39 (1973).

The major purposes of the Compact are:

> [T]o provide for the equitable apportionment of water between the two states; to promote interstate comity and to further inter-governmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation, and control of the water within the Lake Tahoe, Truckee River, Carson River and Walker River Basins. California-Nevada Interstate Compact, Art. I.

These are important interests of the State of Nevada and its water users. The State in its testimony presents a more detailed statement of the reasons why the Compact must be adopted as part of this Bill. I will not repeat those reasons here, except to say that I fully support them.

In short, the Compact must be ratified by this Bill. With that ratification Nevada can approach the Section 107 negotiations with the assurance that the experiences on the Truckee River over the past fifteen years will not be repeated on other rivers.

F. The Provisions In The Legislation For Funds, Authorizations And Requirements That Programs Be Implemented.

Section 108 of the Bill creates the Pyramid Lake Settlement Fund and authorizes the appropriation of $21,000,000 to be used to carry-out its purposes. The State of Nevada will provide an additional $8,000,000 for the Settlement Fund. Section 105(a) of the Bill authorizes and directs the Secretary with respect to water management. He is authorized to acquire by purchase from a willing seller private lands or interests having water rights, to enter into water exchange agreements and other agreements, to conduct weather modification programs and other programs to augment the flows of the Truckee and Carson Rivers.

Section 106(b) provides authorization and direction to the Secretary with respect to fish propagation. It authorizes programs designed to facilitate and maintain physical restoration of the Lower Truckee River, modification or replacement of the fishway and facilities at Marble Bluff Dam, construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Indian Reservation and such other programs as may be agreed upon by the Tribe and the Secretary and the State of Nevada and other affected parties. The Bill provides significant incentive to the Secretary in the form of monetary penalties to see to it that such programs are implemented in a timely fashion.

These provisions allow all concerned parties to enter the Section 107 negotiations with the knowledge that the funds necessary to implement their agreements are available. They also know that there are significant incentives for the early implementation of the necessary programs.

G. The Exemptions From the National Environmental Policy Act And The Endangered Species Act.

Section 112(a) of the Bill exempts the key elements which form the foundation for settlement and the agreements set forth in section 107 from the requirements of the National Environmental Policy Act and section 112(b) provides that actions taken under sections 104, 105, 106, 107 and 111 "shall be recognized and deemed to be in full compliance with the Endangered Species Act." Those provisions are essential to any final settlement.

No action will be taken under any of the provisions of sections 104, 105, 106 and 111 unless and until the agreements required by section 107 have been reached. Those agreements have as their goal an accommodation among the interests of Pyramid Lake and its fish resources and the water supplies of other major parties. Those agreements will not be reached unless the United States and the Tribe are convinced that the environment and the endangered and threatened species are not only protected but benefited.

The actions to be taken under Sections 104 and 106 have as their goal the recovery of the Lahontan cutthroat trout and cui-ui to the point at which they are no longer classified as endangered or threatened under the Endangered Species Act. Thus, the requirements of that Act must necessarily be satisfied. Similarly, the actions authorized by Section 105 are needed to accomplish the goals of sections 104 and 106 and to facilitate the agreements contemplated by section 107.

There is a short time period allowed for reaching the Section 107 agreements. The duties of the Secretary under Sections 104, 105 and 106 begin as soon as the conditions of Section 107 are satisfied. Thus, time is of the essence. There simply is insufficient time allowed for compliance with the requirements of either act and compliance is not necessary.

Equally important is the fact that the parties who must negotiate the agreements required by Section 107 must be confident that once those agreements are reached they will not be upset by outside interests. They must be assured that third persons relying on obscure legal arguments based upon the National Environmental Policy Act and the Endangered Species Act cannot step in at the last moment and undo a settlement authorized and directed by Congress.

The fact that the Endangered Species Act provides an exemption process (see 16 U.S.C. §1536) does not eliminate the need for the provisions of section 112 of this Bill. First, the provisions of 16 U.S.C. §1536(a)(2) are to insure that the federal government does not undertake actions, such as building a highway, that incidentally jeopardize the existence of endangered or threatened species. It is inapplicable where no project has been undertaken that threatens an endangered species. See, Carson-Truckee Water Conservancy District v. Clark, 741 F.2d 257, 262 (9th Cir. 1984). The actions of the Secretary under the provisions of this Bill are intended to recover the Lahontan cutthroat trout and cui-ui to the point at which they are no longer classified as endangered or threatened. The Secretary cannot take actions under this Bill which would require an exemption from the Endangered Species Act in so far as the trout and cui-ui are concerned.

Second, the exemption process requires compliance with the consultation requirements of the Act, a biological assessment of the species, a hearing on the application and a report from the Secretary. See, 16 U.S.C. §1536(g)(3). That process may consume nearly one year. A decision whether or not to grant the exemption is required within 30 days thereafter. See, U.S.C. §1536(h). The decision is thereafter reviewable in the circuit court of appeals on petition by any person. The petition must be filed within 90 days of the decision. See, 16 U.S.C. §1536(n). There is no time limit for a decision by the courts.

The requirements of this Bill are wholly inconsistent with the purposes of the exemption process. Moreover, compliance with the exemption process is inconsistent with the time constraints in this Bill. Finally, the exemption process may open the door to another round of litigation, even after the parties directly affected have agreed on a settlement and course of action beneficial to the endangered and threatened species with which this Bill is directly concerned.

III. THE NEGOTIATED SETTLEMENT REQUIRED BY SECTION 107 OF THE LEGISLATION.

On the foundation provided by this Bill the parties will "build" the agreements required by Section 107. That section requires an agreement providing for the withdrawal, modification or other appropriate disposition of water rights requested under certain applications before the Nevada State Engineer. A number of actions and proceedings must be dismissed with prejudice or otherwise finally concluded in accordance with an agreement of the parties thereto. The operating criteria for the Newlands Project must be adopted and approved. Sierra Pacific, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe and the Secretary must have executed an agreement providing for utilization of available reservoir storage to best effectuate the Secretary's obligations with respect to the municipal and industrial water supply for the cities of Reno, Sparks and Washoe County and with respect to fish propagation at Pyramid Lake and in the Lower Truckee River. Only after these agreements are reached will the long-standing conflicts be finally resolved.

These agreements will not be reached easily. However, never before has there been the commitment provided by this Bill for significant federal assistance in reaching final solutions to these long-standing conflicts. With the enactment of this legislation, the parties can set out to meet and satisfy the requirements of Section 107 with the confidence that the necessary federal commitment to implement their agreements is in place. Without this legislation, Sierra Pacific is confident that the agreements referred to in Section 107, which are necessary to resolve these conflicts whether or not this legislation is enacted, will never be reached. If this legislation is enacted, Sierra Pacific is equally confident that the requirements of Section 107 can be timely satisfied. Sierra Pacific strongly recommends passage of this Bill.

Thank you for allowing me the opportunity to speak to you on this legislation.

EXHIBIT "A"

TO

TESTIMONY OF JOE L. GREMBAN

Material shown in brackets is deleted. Underlined material is new.

Amend Subsection 102(3) as follows:

> (3) the term "Newlands Project" means the project authorized pursuant to the Reclamation act of June 17, 1902 (43 U.S.C. [395] 371 et seq.) for reclamation and irrigation of land in the Carson and Truckee River basins;

Amend Subsection 102(8) as follows:

> (8) the term "replacement cost" means [the then current municipal and industrial water rate charged to the Carson Truckee Water Conservancy District by the Secretary pursuant to section 105(b)] the sum of $37.00 per acre foot during the year immediately following the date upon which the Secretary certifies that the conditions of section 107(a) have been satisfied. On each anniversary date thereafter the replacement cost shall be adjusted to reflect the percentage increase which took place the previous year in the metered rate for commercial water service charged by the entity serving the cities of Reno and Sparks, Nevada; and

Amend Subsection 102(9) as follows:

> (9) the term "water year" means the period commencing on October 1 of any year and ending on September 30 the following year[s; and].

Delete all of Subsection 102(10) as follows:

> [(10) the term "by period" means the period of time that the Truckee River system storage is at reduced levels. The indication of such condition shall be when Lake Tahoe is at or below an elevation of 6225.25 feet, Lake Tahoe DATUM, or such other elevation as agreed to by the Secretary, the Tribe, the Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.]

Amend Section 103(a) as follows:

Sec. 103.(a) Nothing in this [title] Act shall be construed as -

Amend Subsection 103(a)(1) as follows:

(1) modifying or terminating any court decree, except as provided by the provisions in subsections (b) [and (e)] through (h) of section 105 and section 111, including those decrees entered in the following cases:

Amend Subsection 105(a)(3) as follows:

(3) enter into agreement with Truckee-Carson Irrigation District for rehabilitation [and], betterment and operational improvement of the Newlands Project, including the T canal pilot lining project, which shall include a component for the improvement of the Stillwater Wildlife Management Area and the Carson Lake Pasture to the extent such improvement is necessary to mitigate fully the effects of such rehabilitation [and], betterment and operational improvements;

Amend Subsection 105(a)(7) as follows:

(7) after consultation with the Administrator of the Western Area Power Administration (Western), [withdraw from commercial sale all or any portion of Washoe Project power] acquire from the Administrator energy surplus to all contractual obligations of Western for any person or entity who becomes a party to agreements referred to in section 107(a)[(10)](6) if, after such consultation, the Secretary determines that such energy is necessary to offset losses associated with the Truckee River hydroelectric powerplants of such person or entity; or to the extent such losses are not offset, the Secretary shall reimburse such person or entity in the amount necessary to compensate such losses.

Amend Subsection 105(b) as follows:

(b) Notwithstanding any other provision of law and subject to agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, the Secretary shall execute a perpetual contract for the sale of water from Stampede Reservoir in the quantity set forth in sections 105(c) and 105(d) for municipal and industrial use in the cities of Reno and Sparks and Washoe County, Nevada [and not for the purpose of dilution of sewage effluent].

Amend Subsection 105(d)(1) as follows:

(d)(1) After the ten years provided in subsection (c) and based upon a projected demand buildup period to be defined by the [parties (] Secretary, Tribe, Sierra Pacific Power Company[()], and the Carson-Truckee Water Conservancy District, the Carson-Truckee Water Conservancy District shall have the right to withdraw from Stampede Reservoir storage for municipal and industrial purposes, an average of 5,000 acre feet per year or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

Amend Subsection 105(b)(2) as follows:

(2) The [district] Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on the average annual withdrawal from Stampede Reservoir storage of 15,000 acre feet, or such other amount as agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

Amend Subsection 105(f) as follows:

(f) The allocation of project costs made to municipal and industrial water supply under [paragraphs (1) through (4) of subsection (b)] subsections (b) through (e) of section 105 shall be repayable to the United States in 50 years from the date the conditions of section 107 of this title have been met, under the provisions of the Federal reclamation laws, with right of prepayment, and provided further, that repayment of costs allocated to municipal and industrial water supply shall include interest on the unamortized balance of such allocations at a rate equal to the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long term securities outstanding on the date of enactment of the Washoe Project Act (43 U.S.C. 614) and adjusted to the nearest one-eighth of 1 per centum.

Amend Subsection 105(g) as follows:

(g) [Subject] In addition, and subject to the agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, Sierra Pacific Power Company shall have the right to accumulate [p]Privately [o]Owned [s]Stored

[w]Water, as defined in the Truckee River Agreement in Stampede Reservoir to the extent storage is available. Such waters shall be allocated their proportionate share of evaporation loss and in the event water is required to be spilled from Stampede Reservoir such privately owned stored water shall be spilled prior to any Federal water stored in said reservoir.

Add a new Subsection 105(h) as follows:

(h) The water sold under the provisions of subsection (b) through (g) of section 105 shall not be used for the purpose of dilution of sewage effluent; however nothing herein shall be construed to preclude the use of other water stored in Stampede Reservoir for such dilution purposes.

Reletter the remaining subsections of Section 105 as (i), (j), (k) and (l), respectively.

Amend relettered Subsection 105(k) as follows:

(k) Notwithstanding any other provisions of law, the Secretary is authorized to file [an] applications [with the State Engineer of Nevada] for [a] permits to change the point of diversion, place, means, manner, or purpose of use of any water which the Secretary may acquire under this title.

Amend Subsection 106(a)(1)(A) as follows:

(A) provide such measures as are necessary to [bring] recover the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as "endangered" or "threatened" pursuant to the Endangered Species Act (16 U.S.C. 1531, et seq.); and

Amend Subsection 106(b)(2) as follows:

(2) modification and/or replacement of the fishway and fish facilities at Marble Bluff Dam;

Amend Subsection 106(b)(3) as follows:

(3) construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Indian Reservation;

Amend Subsection 106(d) as follows:

(d) For the purposes of [section] subsection 106(a)(2)(B), a hatchery is federally supported if moneys appropriated by Congress were or are used to pay, in whole or in part, for its construction.

Amend Subsection 106(e) as follows:

(e) The Secretary shall [upon agreement with the Tribe] undertake such biological studies as are agreed to by the Tribe to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

Amend Subsection 107(a)(1) as follows:

(1) Sierra Pacific Power Company, [and] Washoe County, [Nevada,] the Tribe and the Secretary have executed an agreement [with the United States and the Tribe] providing for the withdrawal, modification, or other appropriate disposition of the water rights requested under application Nos. 47047, 47121, 47209, and 47264 [pending] before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

Amend Subsection 107(a)(4) through (9) as follows:

(4) The following actions or proceedings are dismissed with prejudice or otherwise finally concluded in accordance with the agreement of the parties thereto:

[(4)](A) Pyramid Lake Paiute Tribe v. California, Civ. S-81-378-RAR, United States District Court, Eastern District of California [is dismissed with prejudice];

[(5)](B) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed amended complaint [is dismissed with prejudice];

[(6)](C) the Tribe's appeal in United States v. Orr Water Ditch Co., No. 85-1880, Ninth Circuit Court of Appeals [is dismissed with prejudice];

[(7)](D) the Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr Water Ditch Co., Equity A 3-WEC, United States

District Court, District of Nevada, and United States v. Alpine Land & Reservoir Co., D-183-BRT, in the United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands [are dismissed with prejudice];

[(8)](E) Pyramid Lake Paiute Tribe of Indians v. [Clark] Hodel No. R-85-197-BRT. United States District Court for the District of Nevada [is dismissed with prejudice]; provided, however that any final disposition of this action other than a dismissal with prejudice shall require the agreement of the Truckee-Carson Irrigation District; and

[(9)](F) Truckee-Carson Irrigation District v. United States, No. 512-7 (Ct. Cl.) [is dismissed with prejudice].

Renumber Subsections 107(a)(10) through (12) as Subsections (5) through (7), respectively.

Amend renumbered Subsection 107(a)(5) as follows:

[(10)](5) the operating criteria has been agreed upon, adopted and approved as provided in section 111; [and]

Amend renumbered Subsection 107(a)(6) as follows:

[(11)](6) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, [ratified such agreement by a court having] obtained ratification of such agreement from a court of competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under [section 106(a)(1) and under sections 105] subsections (b), (c), (d), and [(e)] (g) of section 105 and section 106(a)(1); and

Amend renumbered Subsection 107(a)(7) as follows:

[(12)](7) all pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy [Regulation] Regulatory Commission, have been withdrawn.

Amend Subsection 107(b)(1) as follows:

(b)(1) Subject to the provisions of paragraph (2) and except as provided in subsection[s] (g) [and (h)] of section 108 and section 109(e), all the conditions of section 107(a) shall be accomplished within one year from the date of the enactment of this title or this Act shall terminate and shall be of no further force or effect.

Amend Subsection 108(f) as follows:

(f) In the event the Secretary fails to obligate the sum of $16,000,000 to implement the fish enhancement program required by section 106(a)(1) within five years after the date upon which the conditions of section 107 have been met, or within such additional period as may be agreed upon the Secretary and the Tribe, the amount representing the difference between $16,000,000 and the amount obligated, [shall be forfeited to the Tribe] together with the interest thereon, shall be paid and credited to the Tribal Trust Fund established by section 109 of this title.

Amend Subsection 109(c) as follows:

(c) Except as provided in subsection (b) with respect to the amounts credited to the tribal trust fund under section 108(f), principal and income from the tribal trust fund may be used for capital expenditures relating to the economic development of the [reservation] Pyramid Lake Indian Reservation. Income from the tribal trust fund may be used for operating expenses associated with economic development of the Tribe or tribal administrative purposes.

Amend Subsection 110(b)(2) as follows:

(2) The damages provided for in this section shall not exceed in any one year the sum of $5,000,000 for damages for the failure to meet the requirements of section 104(a) and the sum of $2,000,000 for damages for the failure to meet the requirements of section 104(b) or such lesser amount as may be agreed to by the governing body of the Tribe. Provided that beginning on October 1, 1989, and annually thereafter, the sums set forth in this subsection shall be adjusted annually to reflect the increase in the consumer price index for the previous twelve month period.

Amend Subsection 111(a) as follows:

THE NEWLANDS RECLAMATION PROJECT

SEC. 111.(a) Notwithstanding any other provision of law, all repayment obligations [for irrigation construction costs] owing to the United States or one of its agencies by the Truckee-Carson Irrigation District shall be canceled by the Secretary and the Secretary shall at the request of the District issue a certificate acknowledging that the lands in the District are free of the acreage and ownership and full cost pricing provisions of Federal Reclamation law provided that Truckee-Carson Irrigation District shall have the right to collect all unpaid construction costs. Such certificate shall be in a form suitable for entry in the land records of Churchill County and Lyon County, Nevada.

Delete all of Section 112 as follows:

[SEC. 112. No authority under this title to enter in contracts or to make payments shall be effective except the extent and in such amounts as provided in advance appropriation Acts. Any provision of this title which, directly or indirectly, authorizes the enactment of new budget authority shall be effective only for fiscal years beginning after September 30, 1985.]

Renumber Sections 113 and 114 as Sections 112 and 113, respectively.

Amend renumbered Section 112 as follows:

SEC. 11[3]2. (a) All actions taken by the Secretary pursuant to sections 104, 105, 106, 107, and 111 of this title shall be exempt from the requirements of the National Environmental Policy Act (42 U.S.C. 4321, et seq.).

(b)[(1)] Subject to the provisions of [paragraph (2)] subsection (c), actions under sections 104, 105, 106, 107, and 111 shall be recognized and deemed to be in full compliance with the Endangered Species Act (16[5] U.S.C. 1531, et,seq.) with respect to the Pyramid Lake fish resources and may be taken without regard to the requirements of the Act.

[(2)](c) Nothing in this [subsection] Act shall be deemed to prevent the [Secretary from, in his discretion,] seeking of further appropriations for the purpose of constructing or modifying facilities or structures to enhance the Pyramid Lake fish resources.

(d) Nothing in this Act shall be deemed to exempt the Secretary or any other Federal agency from the requirements of the National Environmental Policy Act or the Endangered Species Act with regard to other programs or actions.

Amend Section 201 as follows:

SEC. 201. The consent and approval of Congress is given to the [Congressional Consent] California-Nevada Interstate Compact between the States of California and Nevada. Such compact reads as follows:

Amend Section 202 as follows:

SEC. 202. [The right to alter, amend, or repeal this title is expressly reserved.] The following provisions of the foregoing Compact shall be binding on the agencies, wards and instrumentalities of the United States of America:

Article V, Section D
Article V, Section F
Article VI, Subsection B.1
Article VI, Subsection B.3
Article VI, Subsection B.4
Article VI, Section D
Article VII, Section A
Article VII, Section B
Article VII, Section C
Article VII, Section D
Article VII, Section E
Article VIII, Subsection A.4(b)
Article VIII, Subsection B.1
Article VIII, Subsection B.5

Amend Section 203 as follows:

SEC. 203. The consent granted by this title shall take effect on the date the Secretary [of the Interior] certifies that the conditions of section 107(a) have been satisfied.

Ms. **Zell**. Mr. Gremban, you have described very thoroughly the benefits to be derived from this proposed settlement. What contributions does the company make to the settlement or what rights or interests does the company relinquish under the terms of the proposed settlement, should a settlement be achieved?

Mr. **Gremban**. In order to make a municipal and industrial water supply available, or to enhance our ability to supply more reliably such water, we have filed an application with the State engineer to appropriate all of the unappropriated water that comes down the Truckee River.

The tribe has subsequently also filed for these unappropriated waters. And recently a federal district court, State of Nevada, has ruled that our application predates that other application.

So, in reaching a settlement under this act, we would have to give up that right to the unappropriated waters to the tribe. And in addition to that, I might mention that during the period of time since the construction of the Stampede Reservoir, it has been used specifically for fishery purposes, and therefore none of the costs of constructing the dam have been repaid by any of the parties.

Now, following the conclusion of these negotiations and acceptance of this act, our customers will have to begin paying part of the costs of the construction of that facility.

Ms. **Zell**. What is your position with regard to the concerns that have been expressed relating to the exemptions that are proposed under the bill from the National Environmental Policy Act and the Endangered Species Act?

Mr. **Gremban**. I don't think it is really an exemption in the act. I think what it provides is that the actions taken by the Secretary will be considered as full compliance with the act, and that these actions that would be taken that are specified in the act are done to enhance and preserve the species and to provide for the recovery of these species so they can be removed from the endangered species list or the threatened list.

So, I don't think this is specifically an action for exemption. It is to confirm the action that will be taken. I might add that this is really a menu of what we will, or the Secretary will be doing to help preserve the fish. And it will include fish ladders, fish hatcheries, they will be making biological studies, revegetation of the river, all of these things to help enhance the recovery.

Ms. **Zell**. One of the questions that has been asked rather frequently in the last 5 or 6 weeks is, why have the parties not attempted to reach a settlement and then come to Congress, rather than seeking legislation which proposes only to facilitate a settlement?

Mr. **Gremban**. As has been testified previously, there have been extensive litigation and negotiations going on for many years, particularly during the last 4 years. We were able to get only so far and then the parties really couldn't commit to what is necessary to be able to get final agreement. There are certain things that can be provided only by the Federal Government.

For example, a commitment to maintain the level of the lake, or a commitment to formulate and implement a fish recovery program, authorization for the Secretary to negotiate with the parties to provide for water supply of Reno, Sparks, and Washoe County, a commitment to provide funding so that the tribe can be reimbursed for costs in trying to accommodate the recovery programs. All of these things have to be provided, it seems to me, by the Federal Government, and it would be done so through this act.

I think each party in this proceeding has something to gain, and each party has something they are going to lose. We can't get everything that we are asking for. I think this legislation, being in place, will provide the carrot, in effect, that is necessary to get all parties to come to a conclusion with these negotiations.

And if the act is not passed, there is really no incentive for them to try and arrive at a conclusion because they don't know whether this will pass sometime in the future. We need that now to provide that carrot to get everybody to agree.

Ms. ZELL. The following question has been submitted by Senator Hecht's office. As the cities of Reno and Sparks grow, how can the Congress be certain that Sierra Pacific will not need to draw further on the Truckee River water to the point where there may not be sufficient water left for the survival of the fish in Pyramid Lake?

Mr. GREMBAN. This act only provides for water out of Stampede. It does not reallocate or make other waters in the river available to Sierra Pacific and its customers. It only provides water to augment our needs in the drought periods. If we are going to require additional water, it is going to have to be obtained by purchasing whatever irrigation rights may still be available in the Truckee Meadows or it has to be done through conservation of existing water usage through metering, for example, which the State of Nevada just authorized us to go ahead with in this last legislature; through desert landscaping, through restrictions on showerheads and other water devices; and perhaps we'll have to consider importation of water from other basins.

But this is not going to take away water that would be available for the fishery purposes.

Ms. ZELL. Thank you.

Mr. TAYLOR. I have two or three questions. As we read this bill, it would appear that title I is authorizing substantial negotiations to take place over a period of a year. Title II is ratifying the California and Nevada Interstate Compact.

If, at the conclusion of the negotiations under title I, the parties fail to reach agreement, obviously title I fails. Is it accurate, or do you agree with our reading that title II would also fail?

Mr. GREMBAN. Gordon, can I turn it over to you?

Mr. DEPAOLI. Yes. Mr. Chairman, Gordon Depaoli, legal counsel for Sierra Pacific. Yes, that is our understanding, that if the agreements required by section 107 of title I are not reached, then the provisions of both title I and title II are not effective.

Mr. TAYLOR. The followup on that, assuming that an agreement was reached that would bring title II into effect, and then for some reason the agreements reached under title I were struck down by a court for some reason, would title II continue to be in effect?

Mr. DEPAOLI. I would hope that the bill is drafted in such a way that the agreements reached under title I are not struck. But going along with your hypothetical, it would seem to me that the way the bill is drafted that title II would remain in effect, because the condition for effectiveness is a certification by the Secretary that the agreements have in fact been—or that the conditions of section 107 have in fact been satisfied.

Mr. **Taylor**. I have no idea how the committee might approach that, but I suppose that that could be addressed through some sort of a severability or a nonseverability clause that would be included, let us say, as a section 204.

I was pleased to hear that the State of Nevada has just authorized meters. I am rather surprised, though. Did it require an act of the State legislature in order to bring about installation of meters in Reno and Sparks?

Mr. **Gremban**. Yes, it did. Because by State statutes we were prohibited from installing meters previously. So it took action of the legislature to make it permissible.

Mr. **Taylor**. It sounds like some of the towns out in Kansas, where I come from, where they won't allow installation of parking meters.

Mr. Gremban, you refer on a number of occasions in your prepared statement to the desire that the experiences and mistakes on the Truckee River over the last 15 years not be repeated. I wonder if you could expound on that a little bit, just what these experiences and mistakes are that you are referring to.

Mr. **Gremban**. Primarily referring to the fact that we have had a tremendous number of legal actions taken as a result of the interest of the various parties. I am really referring to that action.

Mr. **Taylor**. Was there concern also about possible wastage of water?

Mr. **Gremban**. No, I wasn't referring to that at all, no.

Mr. **Taylor**. One of the concerns that has been expressed and will be expressed by the Pyramid Lake Tribe particularly, is the adequacy of the Federal authorization, $21 million, to carry out the different functions that the United States is assuming here. There is a relining of certain irrigation channels, the Marble Bluff fishway, and things like that.

And I would ask your opinion, is $21 million really adequate for the United States to carry out what its commiting itself to here?

Mr. **Gremban**. In the course of the recent negotiations that was the figure that was arrived at by all of the parties concerned. But I think, as Secretary Broadbent has indicated, if there would be additional needs over and above that, it doesn't preclude the tribe from coming in and requesting additional support to conduct whatever betterments or improvements they need in the facilities.

Mr. **Taylor**. I think one of the recommendations that OMB is making would attempt to preclude the Department of the Interior from coming in. Although I must say the act of one Congress does not normally bind another.

All the way through this bill it talks about specific agreements between the parties with respect to specific amounts of water, or such other amounts that may be agreed upon. Obviously that could go either up or down, and I am just curious what the value is of identifying any amount of water.

Are those targets or approximations of what the people think is going to be needed, or what?

Mr. **Gremban**. Because of the different drought conditions that are experienced, there are times when you will need more than you would at other times. And so, as a result we have agreed to an average over a period of time, and specific amounts that the parties may agree to during this period of time.

For example, in the first 10 years it is provided that there would be available the—I believe it was 6,000, an average of 6,000 acre-feet in that period of time. In the first few years, if we have reasonably appropriate precipitation, chances are we won't need any. On the other hand, if we hit severe drought conditions, we may need more than 6,000. But over this 10-year period of time it would be the average of 6,000.

Now, if we are not drawing on that amount, that will go straight into Pyramid Lake.

Mr. **Taylor**. I noticed one of the proposals you have would amend section 202, which goes to the interstate compact. I think the effect of the proposed amendment would be to expand those areas in which an agreement of the parties would be binding on the Federal Government.

Are we reopening the California-Nevada Interstate Compact with that proposed amendment?

Mr. **DePaoli**. Mr. Chairman, if I could respond to that. The suggestion which is attached as exhibit A, in Mr. Gremban's testimony, and the change that is shown there, or was intended to be shown there at least, is a change that resulted from the August 20 meeting. But the listing of the provisions, as to which the United States, its wards and instrumentalities would be bound, is intended to be taken verbatim from the compact itself, and is not intended to expand at all on that list.

So, if there is something listed there that is not in the compact, it is simply a typographical mistake.

Mr. **Taylor**. If it is simply reiterating what is in the compact, why was it proposed?

Mr. **DePaoli**. The compact itself requires that in ratification the Congress, by either a separate section of the Ratification Act or by a separate bill, expressly indicate its agreement that those provisions be bound, or be binding on the United States.

Mr. **Taylor**. That is an intriguing element in the compact. Did the parties contemplate that the Congress might not go along with every one of those things, and yet the compact could remain in place?

Mr. **DePaoli**. Well, it is a little difficult for me to answer what the parties contemplated, but my assumption is that the parties that negotiated the compact had certain specific provisions within the compact that they wanted Congress to expressly indicate would be binding on the United States, its wards and instrumentalities. And absent that provision, the congressional ratification wouldn't necessarily make any of the provisions of the compact binding on the United States.

Mr. **Taylor**. One last question. The amendment you have worked out with Donner-Power, and in fact the bill that was introduced calls for compensation to Sierra Pacific for loss of power—it is a case of whether the United States finds substitute power for you or just makes compensation—do you have any estimates of what that compensation—what your loss of power might be, and what kind of money we are talking about?

Mr. **Gremban**. No; we don't have, because it all depends on how the system is going to be operated, what sort of agreements we are going to come up with as a result of this act. So there is no way really of estimating what that amount might be.

Mr. **Taylor**. Would there be a ballpark figure? We are talking $7 million with respect to the lake dimishing.

Mr. **Gremban**. It could be bound by a figure that I just reached from the top of my head, but——

Mr. **Taylor**. Perhaps you could supply it for the record.

Mr. **Gremban**. As I recall, it was somewhere in the maximum of about $1.5 million a year if we had no generation from those facilities. You see, the reason for that provision for repayment, electric customers are not the same customers necessarily as our water customers. And the generation of power on the Truckee River is our cheapest form of power.

Now, if we cannot generate, that means we have to purchase it or acquire it elsewhere, and that is always at a much higher price than these old hydrounits would be. And consequently, the electric customers we feel should not be burdened with the cost of this water settlement.

Mr. **Taylor**. Is it your opinion that it is probable that there would be some loss of power under whatever agreements are worked up?

Mr. **Gremban**. In certain years there would be.

Mr. **Taylor**. But not necessarily every year.

Mr. **Gremban**. That is right.

Mr. **Taylor**. Virginia Boylan has a question.

Ms. **Boylan**. I am not sure if you are the proper person to ask this question of, but in sections 105 (b) and (e) it talked about the contracts and uses the word "perpetual." Is that normal? Is there precedent for that kind of thing, or is this an unusual provision?

Mr. **DePaoli**. I am not sure I am the person to answer that. I am not sure that it is normal or unusual. I think the idea that is intended to be expressed there is that if all of the controversy is settled, and the Truckee Meadows area is to, in reliance on the settlement, commits itself to whatever growth or development that the agreements will allow, that that somehow is not then taken back at a later time, and suddenly you have people depending on a water supply that doesn't exist. As far as whether that is a normal term or not, I don't know.

Ms. **Boylan**. Thank you.

Mr. **Taylor**. I don't have any more questions. I would like to thank all of you for coming here today. I think it is an excellent testimony that you presented and is going to be very helpful to us. Thank you very much.

Our next witness is Mr. Wilfred Shaw, chairman of the Pyramid Lake Paiute Tribe of Indians, accompanied by Michael Thorp, the attorney for the tribe. Mr. Shaw, feel free to proceed. Your prepared statement will be made a part of the record as if presented in full.

Mr. **Shaw**. All right. Thank you, sir.

STATEMENT OF WILFRED SHAW, CHAIRMAN, PYRAMID LAKE PAIUTE TRIBE OF INDIANS

Mr. SHAW. I am Wilfred Shaw, chairman of the Pyramid Lake Paiute Tribe. I want to thank you for giving me the opportunity to appear before this committee on a matter of such great importance to the Pyramid Lake Tribe.

The Tribal Council of the Pyramid Lake Tribe has authorized me and Mr. Thorp, our tribal attorney, to present to this committee the tribe's position on the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

Congress is being requested to help resolve the Pyramid Lake-Truckee River water rights controversy through the enactment of S. 1558. My personal belief, which is shared by the Pyramid Lake Tribal Council and by our tribal attorneys, is that the Pyramid Lake and Truckee River water and fishery related issues must ultimately be addressed through a fair, just, and equitable negotiated settlement that is aided by Federal legislation.

The tribe has consistently demonstrated a firm commitment to the negotiation process. For example, last year the tribe took the lead in negotiating the terms of a consent decree which resolved one of the most vexing problems on the Truckee River, the excessive diversions of water to the agricultural lands surrounding Reno and Sparks.

Pyramid Lake is the heart and soul of the Pyramid Lake Paiute Tribe and the Pyramid Lake Indian Reservation. The Truckee River is our lifeblood. The lake, which is about the same size as its sister, Lake Tahoe, and its fish are the source of our sustenance and livelihood, spiritual, physical, and financial.

We call ourselves "cui-ui dakodo," cui-ui eaters. The cui-ui is not only an endangered species, it is the sole remaining member of its genus. It is found only in Pyramid Lake. The lake is also an unbelievable fertile habitat for the Lahonton cutthroat trout.

It is important that you, who are so far away in Washington, are able to realize the true magnificence and national importance of the resource that we are trying to save, preserve and recover through the proposed settlement legislation.

The tribe believes that congressional action to save Pyramid Lake is especially appropriate for two additional reasons. First, from the time immemorial, the Pyramid Lake Paiute people sustained themselves from this remarkable renewable resource. It took less than 100 years after the coming of the white man to North America for it to be destroyed.

The cause of its destruction was the enormous diversions of the waters of the Truckee River to the Newlands reclamation project under authority of a congressional action, the 1902 Reclamation Act. That project was built at the time when reclamation of arid lands was the rage and protection of the environment was, at most, an afterthought. It would never be built today.

Second, Pyramid Lake, the cui-ui, the cutthroat trout, and the Pyramid Lake Tribe have been the innocent and abused victims of the American legal system. The tribe lost its most valuable and cherished right without ever having its day in court.

In his brief to the U.S. Supreme Court, Solicitor General Rex Lee stated that the Federal Government did not know of any other situation in which the interests of an Indian tribe had been so badly represented in litigation by the U.S. Justice Department. The tribe therefore believes that Pyramid Lake and its endangered and threatened fish are an especially worthy subject of Congress' concern and assistance.

The Pyramid Lake Tribal Council studied the proposed settlement legislation with great care. We have literally met until the wee hours of the morning straining our eyes and our minds. It has not been easy. It seems that there are new changes, additions, proposals, and corrections that have to be considered every time we meet.

The language and structure of the bill seems to be unnecessarily complex and difficult to decipher. That is even more true of the compact which the Pyramid Lake Tribe has opposed for 15 years. But we have struggled to understand and to be fair, and as I said before, we are firmly committed to the settlement process, which we believe should continue no matter what happens here today and at the House hearings tomorrow.

Here is where we are at. The tribal council wanted desperately to support a bill that will promote and encourage an overall settlement. It would be better not to have any law at all at this stage rather than one which would present obstacles to achieving a fair and workable settlement.

We want to bring lasting peace to our area and put to an end the clouds, uncertainties, and lawsuits that have plagued us for so long. The last thing we need is another law that results in more confusion and uncertainty, and winds up causing more lawsuits.

The tribal council believes that S. 1558, as currently drafted, contains several serious and fatal flaws which will make it more difficult to achieve our goals. The council has expressed its support for another version of the settlement legislation, which we refer to as the August 20, 1985, draft. I am providing the committee with a copy of the tribal council's Resolution No. 81-85, which sets forth our position.

I have asked our tribal attorney, Mr. Michael Thorp, to describe the differences between S. 1558 and the August 20 draft, and to explain the reasons why we prefer the August 20 draft.

I want to emphasize, though, that the bill or the law is only a means to an end. Even if it is enacted, it will not accomplish anything by itself. The council wants a bill that will encourage all of the interested parties to reach the necessary agreements, not one that will make it more difficult to agree and eventually will spawn new legislation to take the place of the cases we are trying to settle.

This past week, the council received a petition signed by more than one-third of the tribe's eligible voters, calling for a tribal referendum vote on the proposed settlement legislation. Under article VIII of our tribal constitution, one-third of our members can call for an election, and its results are conclusive and binding on the tribal council.

The council plans to hold an informational and educational meeting in the three major communities within the reservation and then to schedule a vote of the people. Naturally, we will inform this committee of the results of our democratic process. Needless to say, this subject is a matter of intense interest and concern to all of our tribal members.

Thank you very much for the opportunity to be here today. Thank you.

Mr. **Taylor**. Thank you, Mr. Shaw.

[A letter to the Interior Department stating the Pyramid Lake Paiute Tribe's position on the proposed legislation and Mr. Shaw's prepared statement, on behalf of the Pyramid Lake Paiute Tribal Council, follow. Text resumes on p. 258.]

Fredericks & Pelcyger

ATTORNEYS AT LAW
CANYON CENTER
1881 9TH STREET, SUITE 216
BOULDER, COLORADO 80302

(303) 443-1683

THOMAS R. ACEVEDO*
THOMAS W. FREDERICKS
ROBERT S. PELCYGER**
ROBERT S. THOMPSON, III***
DALE T. WHITE

*ADMITTED ONLY IN VIRGINIA
**ADMITTED ONLY IN CALIFORNIA AND NEW YORK
***ADMITTED ONLY IN WISCONSIN

TOM W. ECHO
(1952 - 1983)

OF COUNSEL
ROBERT J. GOLTEN

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September 18, 1985

Honorable Donald Paul Hodel
Secretary of the Interior
U.S. Department of the Interior
C Street between 18th and 19th, N.W.
Washington, D.C. 20240

Re: Pyramid Lake - Truckee River Settlement
Legislation, S.1558 and H.R.3213

Dear Secretary Hodel:

I am one of the attorneys for the Pyramid Lake Paiute Tribe of Indians. The Tribal Chairman, Mr. Wilfred Shaw, has asked me to write you concerning the proposed Pyramid Lake settlement legislation and to request the Interior Department's support for the Tribe's position at the forthcoming hearings on those bills on October 2 and 3, 1985.

The Tribe's position is set forth in Tribal Council Resolution No. 81-85, a copy of which is enclosed. The Tribe opposes enactment of S.1558 and H.R.3213 in their present form. The Tribe supports settlement legislation in the form that was tentatively agreed to on August 20, 1985 by the concerned parties in Nevada. A copy of the August 20, 1985 Draft Bill is also enclosed.

Many of the changes in the August 20, 1985 Draft Bill have been accepted by the concerned Nevada parties and are not in dispute. There are two significant remaining issues which are primarily of concern to the Tribe and the State of Nevada. As stated in Resolution No. 81-85, the Tribe opposes the settlement bills unless agreement is reached on those two critical issues.

The first issue concerns ownership of the bed and banks of Pyramid Lake and the Truckee River within the exterior boundaries of the Pyramid Lake Reservation. The Pyramid Lake Reservation was created in 1859. In 1976, for the first time, the State of Nevada laid claim to the bed and banks of Pyramid Lake and the Truckee River by filing a lawsuit against the United States. That suit was dismissed by the District Court in 1977. The dismissal was affirmed by the Court of Appeals in 1980 and the Supreme Court denied review in 1981. The grounds for the dismissal were the government's immunity from suit and the running of the 12 year federal statute of limitations.

Since 1981, tribal members and officials have been reminded from time to time by state officials that the State still claims that it owns the bed and banks of Pyramid Lake and the Truckee River within the Reservation and that the State will keep pressing to vindicate that claim. Needless to say, this is a very critical issue to the Tribe since Pyramid Lake and the Truckee River are the very heart and soul of the Pyramid Lake Indian Reservation, the primary sources of the Tribe's livelihood and the spiritual center of the Tribe's culture and heritage. The existence of the State's claim is a constant source of friction, annoyance and antagonism between the Tribe and the State.

The proposed settlement legislation and the agreements that are contemplated under the proposed bills are, of course, intended to end the long and often bitter controversy regarding Pyramid Lake and the Truckee River and to bring peace to the Indian and non-Indian communities in Northwestern Nevada. This worthy goal cannot be achieved as long as the State lays claim to the bed and banks of Pyramid Lake and the Truckee River.

This is the background that lead the Tribe to propose Section 107(a)(8) of the August 20, 1985 Draft Bill. That provision would require the State to relinquish any claim it may have to the bed and banks of Pyramid Lake and the Truckee River within the Pyramid Lake Reservation as part of an overall comprehensive settlement. Section 107(a)(8) is not self-executing; the State's relinquishment would only have to occur when and if all other substantive agreements contemplated by the Bill were reached.

The bottom line for the Tribe is that lasting peace and a cooperative partnership are not possible as long as the State lays claim to the bed and banks of Pyramid Lake and Truckee River. The Tribe respectfully requests your support for this position and asks the Department to join the Tribe in opposing legislation that does not include Section 107(a)(8).

The second divisive issue concerns Congress' ratification of the proposed California-Nevada Interstate Compact. The Compact was negotiated between the two states for approximately twenty years during the 1950s and 60s. The Pyramid Lake Tribe did not participate in those negotiations nor were its interests represented by the federal government or any other party. The reason for the Tribe's absence and the federal government's lack of representation undoubtedly was the prior history of interstate water compacts which uniformly included provisions stating that they were not binding on the United States or its wards or that they would not adversely affect the water rights of any Indian reservation.

But the proposed Compact that emerged from negotiations between the two States included a section which specifically made the critical provisions of the Compact binding on the United States as well as its wards and instrumentalities. The federal government immediately announced its opposition to that Compact primarily because of its adverse affects on Indian tribes, especially Pyramid Lake. That position has been consistently maintained Republican and Democratic Administrations since 1969 and, as a result, the Compact has not made any headway in Congress since it was first passed by the two States and introduced in 1970.

The Pyramid Lake Tribe's preference would be to separate the proposed Compact from the proposed settlement legislation. The Pyramid Lake-Truckee River conflicts are difficult enough to resolve without injecting the other complex issues raised by the proposed Compact. But Nevada has insisted on Congressional ratification of the proposed Compact as part of the overall settlement. Section 204 of the August 20, 1985 Draft Bill was proposed by the Tribe as a compromise to bridge that gap between the Tribe and the State.

The proposed Compact adversely affects the interests of the Pyramid Lake Tribe in various ways. For example, in pending lawsuits, the Pyramid Lake Tribe is claiming all of the currently unappropriated water of the Truckee River system against both California and Nevada. The Tribe and the federal government have also established through the courts that Stampede Reservoir must be operated for the benefit of the Pyramid Lake fishery. Among other things, the proposed Compact would deprive the Tribe of its claim to the unappropriated water in California and arguably would take away a major portion of the yield and capacity of Stampede Reservoir.

Section 204 of the August 20, 1985 Draft Bill would protect the Tribe against the harmful effects of the Compact by providing, in essence, that Title 1 of the Pyramid Lake Settlement Act and the voluntary agreements contemplated and entered into pursuant to Title 1 would take precedence over anything to the contrary in the Compact. Thus, for example, if Title 1 agreements were reached under which California gave up some or all of its Compact allocations to unappropriated water and/or to Stampede Reservoir, the Compact would not and could not be used to prevent their implementation.

In the absence of proposed Section 204, the Tribe's position in the forthcoming negotiations on the agreements to carry out Title 1 of the proposed settlement legislation would be substantially impaired. The Tribe would either have to accept the Compact in its entirety, even though it was not directly or indirectly involved in its negotiation, or else assume the risk that the Title 1 agreements ultimately will withstand a legal challenge based on their alleged inconsistency with the Compact. Obviously, no one will want to enter into agreements whose validity is suspect. Indeed, it would be contrary to the fundamental purpose of the proposed settlement legislation to knowingly cast a cloud over, and invite litigation concerning, the validity of the essential Title 1 agreements.

The potential inconsistency between the proposed Compact and the contemplated Title 1 agreements is a crucial matter that must be addressed in the proposed settlement legislation. If ratification of the Compact is to be included in the settlement legislation, the Pyramid Lake Tribe respectfully requests the Interior Department to support the Tribe's position regarding the necessity for the inclusion of a provision to insure that the Compact will not be used to prevent the implementation of the contemplated Title 1 agreements.

The Pyramid Lake Tribe is committed to do everything possible to secure a just and reasonable settlement of the long-standing controversy that has plagued northwestern Nevada. The Tribe believes that the August 20, 1985 Draft Bill, to which all the concerned Nevada parties tentatively agreed, is a suitable vehicle for achieving that settlement. The Tribe's opposition to any bills that do not include Sections 107(a)(8) and 204 of the August 20, 1985 Draft is predicated on its sincere belief, reached after careful and lengthy discussion and deliberation, that an overall settlement cannot be achieved unless the State of Nevada ultimately is willing to relinquish its claim to the bed and banks of Pyramid Lake and the Truckee River within the Reservation and to agree that the Compact will not prevent the implementation of any of the voluntary agreements that are reached pursuant to Title 1 of the proposed settlement legislation.

Thank you for your consideration of the Tribe's position. Please feel free to contact me if you or anyone else within the Department has any questions or concerns regarding this most crucial matter.

Sincerely yours,

Robert S. Pelcyger

RSP:j

Enclosures

PREPARED STATEMENT OF

WILFRED SHAW, CHAIRMAN

PYRAMID LAKE PAIUTE TRIBE OF INDIANS

ON S. 1558

BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

October 2, 1985

(Corrected October 8, 1985)

I am Wilfred Shaw, Chairman of the Pyramid Lake Paiute Tribe. I want to thank you for giving me the opportunity to appear before this Committee on a matter of such great importance to the Pyramid Lake Paiute Tribe.

The Tribal Council of the Pyramid Lake Tribe has authorized me and Mr. Michael Thorp, our Tribal Attorney, to present to this Committee the Tribe's position on the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

Congress is being requested to help resolve the Pyramid Lake-Truckee River water rights controversy through the enactment of S. 1558. My personal belief, which is shared by the Pyramid Lake Tribal Council and by our tribal attorneys, is that the Pyramid Lake and Truckee River water and fishery related issues must ultimately be addressed and solved through a fair, just and equitable negotiated settlement that is aided by federal legislation. The Tribe has consistently demonstrated a firm commitment to the negotiation process. For example, last year the Tribe took the lead in negotiating the terms of a consent decree which resolved one of the most vexing problems on the Truckee River, the excessive diversions of water to the agricultural lands surrounding Reno and Sparks.

Pyramid Lake is the heart and soul of the Pyramid Lake Paiute Tribe and the Pyramid Lake Indian Reservation; the Truckee River is our lifeblood. The Lake, which is about the same size as its sister, Lake Tahoe, and its fish are the source of our sustenance and livelihood, spiritual, physical and financial.

We call ourselves "cui-ui dakodo," cui-ui eaters. The cui-ui is not only an endangered species, it is the sole remaining member of its genus. It is found only in Pyramid Lake.

The lake is an unbelievably fertile habitat for Lahontan cutthroat trout. The world record for the species, a forty-one pounder, was caught in Pyramid Lake by a tribal member in 1925. We have always shared our trout with others, first with other Indian tribes, then with the white people who came to our area. In fact, the first non-Indians to visit Pyramid Lake, Captain John Fremont and his party in 1844, recorded their astonishment at the extraordinary size and superb taste of our trout as well as at the Tribe's hospitality and generosity. In the late 1880s, 100 tons of Pyramid Lake trout were shipped all over the United States by Wells Fargo Express. In 1912, between ten and fifteen tons of Pyramid Lake trout per week were shipped across the country. In the 1920s and 1930s, Pyramid Lake was a world-renowned fishing resort and was visited by the likes of President Herbert Hoover, Clark Gable, and Supreme Court Justice and United States Attorney General Harlan Fiske Stone. But the trout disappeared from the lake in the 1940s because there was not enough water for them to get to their Truckee River spawning grounds.

The cui-ui cannot be harvested since they are endangered. Its condition is extremely fragile; the Fish and Wildlife Service estimates that more than ninety percent of the cui-ui in the lake today were spawned in 1969. Male cui-ui are sexually active until they are sixteen or seventeen, so the cui-ui are in real trouble.

The trout are on the way back, thanks to the Tribe's hatchery program. In the 1950s, the State of Nevada began planting trout in the lake. Their tests showed that, contrary to popular belief, the Lake could still support Lahontan cutthroat trout. Later, under the Washoe Project Act, the federal Fish and Wildlife Service began stocking the Lake. In the 1970s, Congress appropriated funds for a tribal trout hatchery which began operating in 1974. We now have two trout hatcheries which are operated very successfully by the Tribe. In 1985, we planted almost 2,000,000 trout fry and fingerlings compared to about 400,000 in 1977. We are currently expanding our facilities which, when completed, will double our production to about 4,000,000 trout fry and fingerlings annually.

Our tribal enterprise, Pyramid Lake Fisheries, is the largest employer on the Reservation. All but a few of its thirty-one employees are tribal members. Pyramid Lake Fisheries also has operated the tribal cui-ui hatchery since 1979. We have pioneered new techniques which have enabled us to increase the hatchery production of cui-ui from about 5,000 in 1979 to more than 8,000,000 this past year. As we learn more about the fragile and mysterious cui-ui, the prospects for its survival and ultimate recovery grow brighter if - and this is a big if - there is sufficient inflow into Pyramid Lake from the Truckee River.

On behalf of the Pyramid Lake Tribe, I want to extend our appreciation to the Congress, particularly to the Nevada delegation. Without their efforts, the Tribe's fishery restoration efforts would not have been possible.

The quality of Pyramid Lake's trout fishery is improving rapidly, though it is still a far cry from both what it used to be and what it is capable of being. Twenty pounders are being caught again regularly. The Federation of Fly Fishers, a 40,000 member international organization recognizes Pyramid Lake as one of the best trophy trout fisheries and the only quality cutthroat trout fishery in the world. Pyramid Lake's trout consistently have taken first, second and third places in Field and Stream cutthroat trout contests. Recently, Ray Johnson, a world famous professional trout fisherman, broke five line class world records at Pyramid Lake during a six-day period.

The number of angler days spent by fishermen at Pyramid Lake increased from about 50,000 in 1980 to about 80,000 in 1985. During the past four years, the average time it has taken an angler to catch a fish that is large enough to keep decreased from five hours to three and a half, while the average size of the keepers increased from less than 20 inches to about 21½ inches. There are also a large number of visitors to the Lake who come to enjoy water sports or the magnificent and beautiful environment of the most beautiful desert lake in North America. Income from the anglers and other visitors to the Lake is the Tribe's major source of revenue.

I am telling you all of this so that you who are so far away in Washington will be able to realize the true magnificence and national importance of the resource that we are trying to save, preserve and recover through the proposed settlement legislation. The Tribe believes that congressional action to save

Pyramid Lake is especially appropriate for two additional reasons. First, from time immemorial, the Pyramid Lake Paiute people sustained themselves from this remarkable renewable rescurce. It took less than one hundred years after the coming of the white man to North America for it to be destroyed. The cause of its destruction was the enormous diversions of the waters of the Truckee River to the Newlands Reclamation Project under authority of a congressional action, the 1902 Reclamation Act. That project was built at a time when reclamation of arid lands was the rage and protection of the environment was, at most, an afterthought. It would never be built today. Second, Pyramid Lake, the cui-ui, the cutthroat trout, and the Pyramid Lake Tribe have been the innocent and abused victims of the American legal system. The Tribe lost its most valuable and cherished right without ever having had its day in court. In his Brief to the United States Supreme Court, Solicitor General Rex Lee stated that the federal government did not know of any other situation in which the interests of an Indian tribe had been so badly represented in litigation by the United States Justice Department. The Tribe therefore believes that Pyramid Lake and its endangered and threatened fish are an especially worthy subject of Congress' concern and assistance.

The Pyramid Lake Tribal Council studied the proposed settlement legislation with great care. We have literally met until the very wee hours of the morning straining our eyes and our minds. It has not been easy. It seems that there are new changes, additions, proposals and corrections that have to be considered every time we meet. The language and structure of the bill seem to be unnecessarily complex and difficult to decipher. That is even more true of the Compact which the Pyramid Lake Tribe has opposed for fifteen years. But we have struggled to understand and to be fair, and as I said before, we are firmly committed to the settlement process which we believe should continue no matter what happens here today and at the Senate hearings yesterday.

Here is where we are at. The Tribal Council desperately wants to support a bill that will promote and encourage an overall settlement. It would be better not to have any law at all at this stage rather than one which will present obstacles to achieving a fair and workable settlement. We want to bring lasting peace to our area and to put an end to the clouds, uncertainties and lawsuits that have plagued us for so long. The last thing we need is another law that results in more confusion and uncertainty and winds up causing more lawsuits.

The Tribal Council believes that S. 1558 as currently drafted contains several serious and fatal flaws which will make it more difficult to achieve our goals. The Council has expressed its support for another version of the settlement legislation which we refer to as the August 20, 1985 Draft. I am providing the Committee with a copy of the Tribal Council's Resolution, No. 81-85, which sets forth our position. I have asked our tribal attorney, Mr. Michael Thorp, to describe the differences between

S. 1558 and the August 20 Draft and to explain the reasons why we prefer the August 20 Draft.

I want to emphasize though that the bill or the law is only a means to an end. Even if it is enacted, it will not accomplish anything by itself. The Council wants a bill that will encourage all of the interested parties to reach the necessary agreements, not one that will make it more difficult to agree and eventually will spawn new litigation to take the place of the cases we are trying to settle.

This past week, the Council received a petition signed by more than one-third of the Tribe's eligible voters calling for a tribal referendum vote on the proposed settlement legislation. Under Article VIII of our Tribal Constitution, one third of our members can call for such an election and its results are conclusive and binding on the Tribal Council. The Council plans to hold informational and educational meetings in the three major communities within the Reservation and then to schedule a vote of the people. Naturally, we will inform this Committee of the results of our democratic process. Needless to say, this subject is a matter of intense interest and concern to all of our tribal members.

Thank you very much for the opportunity of appearing before you today.

Resolution NO. PL-81-85

RESOLUTION OF THE PYRAMID LAKE PAIUTE TRIBE OF THE PYRAMID LAKE RESERVATION NIXON, NEVADA

WHEREAS, the Pyramid Lake Paiute Tribe of the Pyramid Lake Indian Reservation, Nevada, is currently engaged in a number of lawsuits concerning water rights of the Carson and Truckee Basins as well as other matters related to Pyramid Lake, the Lower Truckee River and the Tribe's fishery; and,

WHEREAS, the Pyramid Lake Paiute Tribe has been engaged in extensive settlement negotiations to resolve these lawsuits and other matters; and,

WHEREAS, S. 1558 and H.R. 3213 have been introduced into the Congress of the United States as legislation intended to settle the Pyramid Lake and Truckee River water rights controversy; and,

WHEREAS, the Pyramid Lake Paiute Tribe has not agreed to support S. 1558 and H.R. 3213 and has determined that this legislation needs additional revision before it can be approved by the Pyramid Lake Paiute Tribe; and,

WHEREAS, on Tuesday, August 20, 1985, the parties to the settlement negotiations met in Reno, Nevada and tentatively agreed to modifications to the proposed settlement legislation, which modifications would result in legislation which could be supported by the Pyramid Lake Paiute Tribe; and,

WHEREAS, by letter dated August 27, 1985, the attorneys for the State of Nevada notified the Pyramid Lake Paiute Tribe that §§107(a)(8) and 204 must be deleted from the proposed settlement legislation in order to obtain the approval of the State of Nevada; and

WHEREAS, the Pyramid Lake Paiute Tribe deems §§107(a)(8) and 204 to be essential elements of any settlement legislation in order for that legislation to receive the approval of the Pyramid Lake Paiute Tribe.

NOW THEREFORE, be it resolved that the Pyramid Lake Tribal Council, governing body of the Pyramid Lake Paiute Tribe, hereby declares that it does not support enactment of the legislation known as S. 1558 and H.R. 3213 in that legislation's present form.

BE IT FURTHER RESOLVED, that the Pyramid Lake Paiute Tribal Council would support settlement legislation as tentatively agreed to by the parties on August 20, 1985, which settlement legislation must include proposed §§107(a)(8) and 204.

BE IT FURTHER RESOLVED, that if hearings are held on S. 1558 and H.R. 3213 as currently scheduled on October 2 and 3, 1985, the Tribal Chairman and the Tribal attorneys are hereby directed to testify at said hearings and, specifically, to oppose the enactment of S. 1558 and H.R. 3213 as currently drafted. They are further directed to inform the Congress of other concerns that the Tribe has regarding the proposed settlement legislation, including, but not limited to, the failure to make definite the term "replacement cost" and to index that cost, the importance of §107(a)(8), the necessity of increasing the federal contribution to the settlement fund, the importance of indexing the damage ceiling contained in §110(b)(2), the importance of modifying §111(b)(2), the importance of deleting §§112 and 113 and the importance of deferring approval of the California-Nevada Interstate Compact.

BE IT FURTHER RESOLVED, that if prior to said hearings the draft legislation tentatively agreed to on August 20, 1985 is introduced into Congress in its entirety, including §§107(a)(8) and 204, the Tribal Chairman and the Tribal attorneys are directed to notify the relevant committees of the Congress of the Pyramid Lake Tribe's support for the settlement legislation. Unless S. 1558 and H.R. 3213 are amended to reflect the tentative agreement of August 20, 1985, the Tribal Chairman and Tribal attorneys are directed to present the Tribe's position as reflected above.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of 10 members of whom 9 constituting a quorum were present at a meeting duly held on September 6, 1985, was adopted by the affirmative vote of 7 for and 2 against, pursuant to authority contained in the Constitution and By-Laws of the Pyramid Lake Paiute Tribe.

/s/ Della John
Secretary, Pyramid Lake Paiute
Tribal Council

Mr. TAYLOR. Mr. Thorp.

STATEMENT OF MICHAEL R. THORP, ATTORNEY FOR THE PYRAMID LAKE PAIUTE TRIBE OF INDIANS

Mr. THORP. Thank you, Mr. Taylor. My name is Michael Thorp. I am the tribal attorney for the Pyramid Lake Tribe. I have submitted a detailed written statement to the committee. That statement has attached to it three attachments. Attachment A is what is referred to as the August 20, 1985, settlement draft. Attachment B contains detailed comments of the tribe on the difference between the August 20 draft and S. 1558. Attachment C contains detailed comments of the tribe on the interstate compact.

Mr. TAYLOR. Those statements will be made a part of the record as if presented in full.

Mr. THORP. Thank you, Mr. Taylor.

I do not plan on reading my statement here this afternoon, but, with your permission, I would just like to make a few comments. First of all, I think it is extremely important for the committee to understand that the objective of the Pyramid Lake Tribe in supporting any settlement legislation is not to give up water. The objective of the Pyramid Lake Tribe is to get more water for Pyramid Lake.

The fact of the matter is, at the present time Pyramid Lake is not receiving sufficient water to maintain its level over the long term and to sustain natural spawning flows. We feel that we have made some progress in that direction. Fortunately, nature has been with us in the past several years so that Pyramid Lake is at a higher elevation than it has been for quite some time. But over the long term we think that the trend is still downward. The fact of the matter is that we do need more water.

Now, the question then is, how do we get that water? Can it be gotten through litigation or are we able to get it through some sort of settlement? It is our view that the best vehicle is through comprehensive settlement legislation. The reason is that there simply is not any way to make new water in western Nevada. There is only so much water available, and there are a lot of people who have existing water rights.

So, in order to get more water to Pyramid Lake, it seems to us that several things would have to happen. First, conservation measures can be undertaken in that area. Normally that requires the expenditure of money. Through this bill we are hopeful that that will happen. An example is a rehabilitation and betterment project on the Newlands project.

Second, the needs of the fish can be lessened to some extent, and that can be done, for example, through a restoration of the lower Truckee River. For those of you who are not aware of it, the Corps of Engineers in the 1960's went through the lower Truckee River and cleared out all of the vegetation, which exposed the river to the direct rays of the sun, making it less viable as a habitat for the fish.

If we are able to restore that canopy, it will keep the water cooler, and it means less water is needed for natural spawning.

Mr. TAYLOR. Why did the corps take out that vegetation?

Mr. THORP. It was part of a flood control project. They felt that the water would have a tendency to back up in the vegetation. So, if you made a chute out of the river, then the water will travel faster. They did not take into account what effect that would have on the fish.

Mr. TAYLOR. Is that why we enacted NEPA?

Mr. THORP. More the Endangered Species Act. Certainly that project would not be done today. The other thing we hope to achieve through settlement legislation, as opposed to litigation, is a change in the way that the Truckee River is operated. Right now the operation of the Truckee River is locked in concrete, so to speak, through several court decrees. It is only through a comprehensive agreement of the parties to those decrees that we are ever going to get a change in the operation of the Truckee River. We think that by changing the operation of the Truckee River, we can meet people's existing rights and get more water to Pyramid Lake.

So, with regard to Stampede Reservoir, for example, while that reservoir is currently being used for Pyramid Lake only, we are hopeful that through a comprehensive coordinated reservoir program, in effect, more storage capacity will become available for Pyramid Lake. And so, although some storage capacity at Stampede might be given up, there would be a net gain for Pyramid Lake by, for example, using Lake Tahoe for storage at certain times of the year.

So, the first point I would like to make is that it is the objective of the tribe to get more water to Pyramid Lake and certainly not less.

Second, it is the goal of the tribe not just to insure survival of the Lahonton cutthroat trout and the cui-ui, but to follow the lead of the Endangered Species Act and to get a conservation of the species which will lead to the species—both species—eventually to be removed from the endangered species lists, so that they are no longer considered threatened with extinction and, in fact, do not need the protection of the act any longer. I would like to make that clear to the committee.

Now, it seems to us that through the various statements that have been submitted to this committee, it should be very obvious to everybody present in the room that, in fact, we do not have an agreement at this point. Even the Interior Department, through their statement, have brought in what we have to consider to be substantial recommended changes to S. 1558. The tribe would request of the committee that a period of time be allowed for the parties to get back together in Nevada and see if we cannot resolve a lot of this that has now surfaced. Things have surfaced that were not on the table before. We really think that is the way that this can best be accomplished. We are certainly willing to sit down and try to accomplish that.

It would also allow the tribe time to conduct its referendum vote which constitutionally, under the tribal constitution, the council is bound to do. We will attempt to expedite that process. The council is, to a certain extent, however, straitjacketed now knowing that that vote will be taking place shortly.

Mr. TAYLOR. I would like to just make one comment on the proposed amendments. When this bill was introduced, there was an understanding generally back here that it came very, very close to representing a final agreement among all of the participants in the negotiation.

You have come in with some substantial amendments. I would just like to make clear on the record you are certainly not the only ones that have. Half of the witnesses here today came in with proposed amendments. So, I just wanted tc make that clear on the record.

Mr. THORP. Yes, sir. Now, if I could, I would just like to briefly outline what we see as some of the fundamental differences that are still on the table, which have been set out in detail in my written testimony.

First of all, the tribe feels very strongly that section 107(8) does need to be included in the bill. That is the section that would require the State of Nevada to relinquish its claim to the bed of Pyramid Lake and the Truckee River.

Our position is relatively simple. Pyramid Lake is the only real asset of the Pyramid Lake people. There is no substantial irrigated acreage out there. There simply isn't anything else. The bed issue is close to the hearts of the Pyramid Lake people. It does have, or at least arguably does have, substantial, practical effects—at least argued by the State—with regard to jurisdiction over fishing on the lake, access to the lake, things like that.

Now, it is true that the matter was—there was an attempt to litigate the matter in the 1970's, and the case was dismissed on sovereign immunity and statute of limitations grounds. But as a practical matter, every time the tribe meets with the State, especially the State department of wildlife, the threat is made that "we are going to get the bed of Pyramid Lake," and, "we are going to get that jurisdiction." If we are going to consider an overall settlement, we think we really ought to consider everything we possibly can. This is certainly something within the realm of this type of settlement.

The State has absolutely no use for the bed of Pyramid Lake. It is something that they should be willing to just give up on, it seems to us.

Second, the appropriations. The Federal share of the settlement fund is currently set at $21 million. When these negotiations began, the Interior Department informed the parties that as far as they were concerned, $30 million was the cap. They said they had checked with the Office of Management and Budget, and that was it. It was not negotiable. So, that was not negotiated.

We made it clear to the Interior Department at that time that if we could reach a settlement in which the tribe agreed on everything, then we would not independently go to Congress and ask for more money. But that hasn't happened, and we don't feel that we are bound by any commitment to the $30 million, especially because we really don't think that a $21 million appropriation is going to do the job. And it is not fair to come to Congress and tell you that it will when it won't, and we will be back next year.

The fact of the matter is, if you add up the estimated costs of the necessary programs, it comes to more than the $21 million. Lower river restoration is estimated at $13 million; Marble Bluff Dam at $10 million; and I might just add there that Marble Bluff Dam was a very expensive facility to begin with. The fact of the matter is that there were design flaws in it and it is not working the way it should. So, it seems to make no sense to leave it the way it is after that expenditure when the thing does not work right. So, that is another $10 million.

The Newlands project rehabilitation is estimated at $16 million, and then I think you can expect that some purchase of water rights will be necessary and other contingencies that we put at $12 million, bringing the grand total to $51 million. If you subtract the $8 million from the State, it leaves $43 million for the appropriation. We think that is a more realistic figure.

I might say that as far as the justification for a Federal expenditure of that nature, I think that this legislation is somewhat unique. If you take a look at the other Indian settlement acts that have taken place, I think you generally find that the Federal Government may have been a contributor to the problem. Generally, however, it wasn't the only contributor.

An example is the city of Tucson settlement. Nobody encouraged Tucson to grow like it did when there was not enough water for both the city and the Papago. In this situation, however, it was the Federal Government's fault. The Federal Government grossly overestimated the amount of water available in the area for the Newlands reclamation project, and it grossly underestimated the amount of water necessary for everybody else. So, I think the Federal Government caused this problem, and that the Federal Government should be willing at this time to foot the bill to correct it.

Just two more points. The first is, a concern of the tribe arose at the last tribal council meeting which we think should be addressed in the legislation. And that is that in section 106(a)(2) there is a commitment that the Secretary of the Interior will continue the various programs that are ongoing on the reservation; the tribal hatcheries, Marble Bluff Dam and fishway.

The concern that arose is that that funding would come out of the settlement fund as opposed to the normal appropriation process, as it has in the past years. We think the bill should make it plain that the appropriation—other appropriations would continue to fund the hatcheries, because the money that is being set aside in the settlement fund is supposed to take care of additional things, not just fund the status quo. So, we would encourage that change.

And finally, a few comments on the compact. The Pyramid Lake Tribe has, for about 15 years, opposed the interstate compact. The tribe was not a party to the compact negotiations. And frankly, I don't know that the tribe even attended very many negotiation sessions, but I will research that and provide additional information to the committee on that.

But the fact of the matter is, when those negotiations went forward, it was with the assumption that the interstate compact would be like previous interstate compacts, which are listed in my prepared testimony, in which neither the Federal Government nor the Federal Government's wards were bound by the compact provisions.

Much to everybody's surprise, when the compact was finally negotiated that wasn't the case. The Federal Government and the tribes were to be bound by the substantive provisions of the interstate compact.

The second point is that the interstate compact was negotiated a long time ago, and a number of things have happened since then which we think make it very possible that the interstate compact will conflict with what we are trying to achieve in this settlement. Specifically, for example—and this is not the total list, I think you will find that in attachment C to my testimony—for example, the interstate compact would give the State of California 6,000 acre-feet conservation yield of Stampede Reservoir. Well, we don't know that that will fit in with the reservoir coordination program that we have in mind.

We believe that the interstate compact increases the water duty on the upper Carson River valley land, which would allow them to take more water out of the Carson, leaving less water in the Carson for the Newlands project, meaning that the Newlands project has to take more water out of the Truckee, meaning less water for Pyramid Lake. So there are a number of things in the interstate compact which we think do conflict with what we are trying to achieve here.

So, our preference would be that the compact is left out separately. Once we have a settlement, then perhaps some renegotiation of the compact would be necessary. If that is not the case, then we have proposed a compromise, our section 204, which would say that the agreements we reach take precedent over the compact. We feel that something like that is absolutely necessary because it certainly doesn't do us any good to get an agreement, and get a settlement, and then have it wiped out by the interstate compact.

Everyone says that they certainly don't intend to do that, so we don't understand why we can't have some protection somewhere on that point.

I guess that then concludes my remarks, and we are, of course, happy to answer questions, Mr. Taylor.

Mr. Taylor. Thank you very much.

[Mr. Thorp's prepared statement, with attachments, on behalf of the Pyramid Lake Paiute Tribal Council, follows. Testimony resumes on p. 325.]

PREPARED STATEMENT OF

MICHAEL R. THORP

ATTORNEY FOR THE
PYRAMID LAKE PAIUTE TRIBE OF INDIANS

ON

THE PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT OF 1985

S. 1558 (99TH CONG. 1ST SESS.)

BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

October 2, 1985

I am Michael R. Thorp, Tribal Attorney of the Pyramid Lake Paiute Tribe of Indians. It is a privilege to be here today to present to this Committee the views of the Pyramid Lake Paiute Tribe on the proposed Pyramid Lake Paiute and Truckee River Settlement Act of 1985. This proposed legislation is of vital concern to the Pyramid Lake Tribe and the Tribal Council has authorized Chairman Shaw and myself to present the views of the Tribal Council to the Congress. My focus will be on the outstanding issues regarding the proposed legislation which remain in dispute.

On August 20, 1985, the Nevada parties, including the Tribe, the State of Nevada, the Truckee-Carson Irrigation District, the Carson-Truckee Water Conservancy District and the Sierra Pacific Power Company, met in Reno to discuss possible changes to the proposed legislation. I have attended Pyramid Lake settlement sessions for many years, and that was by far the best. All of the parties were sincerely interested in achieving an overall settlement and in improving the proposed legislation so that it would do everything possible to promote an overall negotiated resolution, would not present any unnecessary obstacles to settlement, and would not create uncertainties that could or would give rise to future litigation.

At the August 20 meeting, the Nevada parties reached tentative agreement on numerous changes to S. 1558. Those changes are incorporated in the August 20, 1985 Draft Bill, Attachment A to my prepared testimony, and are described and explained in

Attachment B to my prepared testimony. Many of the changes described in Attachment B are technical corrections or clarifications. All of them are relatively non-controversial and either have been or probably will be agreed upon by the Nevada negotiating parties. Consequently, I will not discuss them further in my oral testimony although I will, of course, be glad to respond to your questions.

1. The first outstanding or unresolved issue concerns ownership of the bed of Pyramid Lake and the Truckee River within the exterior boundaries of the Pyramid Lake Reservation. The Pyramid Lake Reservation was created in 1859. In 1976, for the first time, the State of Nevada laid claim to the bed of Pyramid Lake and the Truckee River by filing a lawsuit against the United States. That suit was dismissed by the District Court in 1977. The dismissal was affirmed by the Court of Appeals in 1980 and the Supreme Court denied review in 1981. The grounds for the dismissal were the government's immunity from suit and the running of the applicable 12 year federal statute of limitations.

Since 1981, tribal members and officials have been reminded from time to time by state officials that the State still claims that it owns the bed of Pyramid Lake and the Truckee River within the Reservation and that the State will keep pressing to vindicate that claim. Needless to say, this is a very critical issue to the Tribe since Pyramid Lake and the Truckee River are the very heart and soul of the Pyramid Lake Indian Reservation, the primary sources of the Tribe's livelihood and the spiritual centers of the Tribe's culture and heritage. The existence of the State's claim is a constant source of friction, annoyance and antagonism between the Tribe and the State.

The proposed settlement legislation and the agreements that are contemplated under the proposed bills are, of course, intended to end the long and often bitter controversy regarding Pyramid Lake and the Truckee River and to bring peace to the Indian and non-Indian communities in Northwestern Nevada. This worthy goal cannot be achieved so long as the State lays claim to the bed of Pyramid Lake and the Truckee River.

This is the background that lead the Tribal Council to propose Section 107(a)(8) of the August 20, 1985 Draft Bill. That provision would require the State to relinquish any claim it may have to the bed of Pyramid Lake and the Truckee River within the Pyramid Lake Reservation as part of an overall comprehensive settlement. Section 107(a)(8) is not self-executing; the State's relinquishment would only have to occur when and if all other substantive agreements contemplated by the Bill were reached.

The bottom line for the Tribal Council is that lasting peace and a cooperative partnership are not possible if the State's claim to the bed of Pyramid Lake and the Truckee River remains resolved. The Tribe is not willing to negotiate solutions to all of the other outstanding water and fishery related disputes only to be met with, and then have to relitigate, the State of Nevada's claim that it owns Pyramid Lake. For that reason, the

Tribal Council opposes enactment of any bill that does not include a provision along the lines of Section 107(a)(8) of the August 20, 1985 Draft Bill.

2. Subsection 108(c) authorizes an appropriation to the settlement fund of the sum of $21 million as the federal contribution to this settlement. The Pyramid Lake Tribe maintained from the outset of the negotiations that a federal contribution of $21 million would be completely inadequate to carry out the terms of this settlement. To date, however, the federal government, through the Department of the Interior, has refused to consider any sum in excess of $21 million.

In order for the settlement provided for in the proposed legislation to be effectuated, a number of projects and programs designed to enhance the Pyramid Lake Fishery and to provide for water conservation must be implemented. Some of those programs and their estimated costs are as follows:

a. A program designed to facilitate and maintain physical restoration of the Lower Truckee River. This program is estimated to cost approximately $13 million.

b. Modification and/or replacement of the fishway and fish facilities at Marble Bluff Dam. This program is estimated to cost approximately $10 million.

c. A program for the rehabilitation, betterment and operational improvement of the Newlands Reclamation Project. This program is estimated to cost $16 million.

d. Depending upon the savings generated by the other projects, it will probably be necessary to purchase some existing water rights and either retire those water rights or transfer those rights to Pyramid Lake. A reserve of at

> least $12 million should be maintained in the settlement fund for this purpose and for other contingencies.

The total cost of these programs is approximately $52 million. With a contribution from the State of Nevada of $8 million, this still requires that a minimum of $43 million be appropriated for the settlement fund in order to effectuate the purposes of this legislation. Therefore, the $21 million figure contained in Section 108(c) should be changed to $43 million.

3. A related problem was raised at the special Tribal Council Meeting this past Friday, September 27, 1985. Under subsection 106(a)(2) of the proposed legislation, the Secretary of the Interior is obligated to continue to operate and maintain three ongoing programs for the benefit of Pyramid Lake's endangered and threatened fish, the Fish and Wildlife Service's Lahontan National Fish Hatchery, the tribal hatcheries on the Pyramid Lake Reservation, and the Marble Bluff Dam, fishway and fish facilities. The Tribe's understanding throughout the negotiations on the proposed bill was that the Settlement Fund established pursuant to Section 108 would be used to fund additional programs for the benefit of the fishery including the ones I previously discussed.

Upon reviewing the bill again last Friday night, the Tribal Council discovered that the only limitation on the use of the Section 108 Settlement Fund is that the funds "be used to carry out the purposes provided in this title." It therefore appears that the Settlement Fund could, and perhaps would be used to continue to operate and maintain the three ongoing programs described in subsection 106(a)(2). That would be contrary to the Tribe's understanding of the intent of the proposed legislation which is to insure continuation of the three ongoing programs and, in addition, to provide federal funding for the other fish enhancement efforts authorized in the bill that eventually are selected by the Secretary. If the Settlement Fund is used to provide funding for the three ongoing programs, the entire settlement effort will collapse because there will not be any money to carry out the other programs contemplated in the Act.

To correct this problem, the Tribal Council recommends that subsection 106(a)(2) be amended to read as follows:

> Section 106(a). In addition to the obligations referred to in Section 104, the Secretary shall...
>
> (2) continue to operate and maintain with funds other than those authorized in Sections 108 and 109 ...

The Tribal Council's proposed change is underlined.

The Tribal Council has instructed me to inform the Committee that this matter is extremely important and that the Tribal Council will not support enactment of the proposed legislation unless it is made clear that the funds needed to carry out the Secretary's obligations pursuant to Section 106(a)(2) will not come from either the Section 108 Settlement Fund or the Section 109 Tribal Trust Fund. As I said before, I believe that the Tribe's proposed amendment reflects the intent of the negotiating parties, principally the Tribe and the Interior Department.

4. Title II -- Consent and Approval of the California-Nevada Interstate Compact.

The Pyramid Lake Tribe strongly opposes Congressional approval of the California-Nevada Interstate Compact and any connection between the Compact and the settlement legislation for several reasons.

First, the negotiations between the States of Nevada and California over the California-Nevada Interstate Compact took place over approximately 20 years. During that time, the Pyramid Lake Tribe was not represented in any way in the negotiations. The Pyramid Lake Tribe did not participate in the negotiations, was not allowed to have meaningful input into the negotiations, and did not, in any way, approve the Compact which was finally ratified by the Legislatures of California and Nevada. The federal government did have one representative at the negotiations, but that representative did not purport to represent the Tribe or the views of the Tribe.

In fact, a major assumption of the federal government and the Tribe during the Compact negotiations was that any Compact approved by California and Nevada would not be binding upon the United States or any affected Indian Tribes. This had been the consistent pattern established by previous interstate water compacts, which uniformly provided that they were not binding upon the United States and its wards whenever Indian water rights could have been affected. See, e.g., Act of August 30, 1957, Pub. L. No. 85-222, Art. 10, 71 Stat. 497, 505 (Klamath River Basin Compact); Act of November 7, 1977, Pub. L. No. 89-789, Art. 13, 80

Stat. 1405, 1414 (Arkansas River Basin Compact). This consistent treatment of all previous interstate compacts is not surprising since the purpose of the interstate compact clause is to provide for resolution of disputes between states, not between the states and Indian tribes.

Contrary to the expectations of both the federal government and the Pyramid Lake Tribe, the California-Nevada Interstate Compact, in Article XXII, expressly provides that Congress must agree to make the principal provisions of the Compact binding upon the United States and its wards, including Indian Tribes.

Thus, the California-Nevada Interstate Compact was negotiated without the Pyramid Lake Tribe's involvement and with the tacit understanding that the terms of the Compact would not be binding upon the Tribe. The Compact presented for ratification to Congress, however, requires that it be made binding upon the Tribe. This result is not only unjust in that provisions of the Compact, as demonstrated below, may very well defeat the efforts of the United States and the Tribe to save Pyramid Lake and restore the magnificant Pyramid Lake fishery, but is also a violation of the basic tenet of federal Indian policy that tribes must have an effective voice in governmental decisions which affect them.

Second, the provisions of the California-Nevada Interstate Compact are obsolete. Since the proposed Compact was ratified by California in 1970 and by Nevada in 1971, a number of events have occurred which alter the circumstances and assumptions upon which the Compact was based. For example, a final decree has been entered in the Carson River adjudication, United States v. Alpine Land and Reservoir Co., et al., No. D-183 (D. Nevada). Operating Criteria and procedures for the Newlands Reclamation Project were promulgated by the Department of the Interior in 1973 and subsequently were upheld by the United States District Court for the District of Nevada and the 9th Circuit Court of Appeals. Those criteria provide that the Carson River should be maximized for use on the Newlands Project, thereby minimizing the amount of water diverted from the Truckee River for the Project. This provision contrasts with the provisions of the proposed Compact dealing with the Carson River which, as shown below, gives Carson River water users the right to divert much more water than their decreed entitlement.

Moreover, the proposed Compact was negotiated prior to the enactment of both the National Environmental Policy Act, 42 U.S.C. §§4321 et seq., and the Endangered Species Act, 16 U.S.C. §§1531 et seq. Pyramid Lake's endangered and threatened species are adversely affected by the proposed Compact, and the Compact makes no effort to conserve those fish in accordance with the national policies established by Congress in the 1973 Endangered Species Act. Finally, the Department of the Interior completed construction of Stampede Reservoir in 1976 and the United States District Court for the District of Nevada and the 9th Circuit Court of Appeals have held that it should be used exclusively for the benefit of the Pyramid Lake Fishery until the Lahontan cutthroat trout and cui-ui either are no longer listed as endangered or threatened species or receive sufficient water for their conservation from other sources. This decision also directly conflicts with provisions of the Compact.

For these reasons as well as others that have nothing to do with Pyramid Lake, the executive branch of the federal government consistently has opposed congressional ratification since the proposed Compact was first proposed in 1971.

Attachment C to my prepared testimony contains the Pyramid Lake Tribe's detailed comments on the specific provisions of the proposed Compact which affect the Tribe's interests.

The Pyramid Lake Tribe's preference would be to separate the proposed Compact from the proposed settlement legislation. The Pyramid Lake-Truckee River conflicts are difficult enough to resolve on their own without injecting the other complex issues raised by the proposed Compact such as the Walker River and Carson River allocations. But Nevada has insisted on Congressional ratification of the proposed Compact as part of the overall settlement. Section 204 of the August 20, 1985 Draft Bill was proposed by the Tribe as a compromise to bridge that gap between the Tribe and the State.

As I previously stated, the proposed Compact adversely affects the interests of the Pyramid Lake Tribe in various ways. For example, in pending lawsuits, the Pyramid Lake Tribe is claiming all of the currently unappropriated water of the Truckee River system against both California and Nevada. The Tribe and the federal government have also established through the courts that Stampede Reservoir must be operated for the benefit of the Pyramid Lake fishery. Among other things, the proposed Compact would deprive the Tribe of its claim to the unappropriated water in California and arguably would take away a major portion of the yield and capacity of Stampede Reservoir.

Section 204 of the August 20, 1985 Draft Bill would protect the Tribe against the harmful effects of the Compact by providing, in essence, that Title 1 of the Pyramid Lake Settlement Act and the voluntary agreements contemplated and entered into pursuant to Title 1 would take precedence over anything to the contrary in the Compact. Thus, for example, if Title 1 agreements were reached under which California gave up some or all of its Compact allocations to unappropriated water and/or to Stampede Reservoir, the Compact would not and could not be used to prevent their implementation.

In the absence of proposed Section 204, the Tribe's position in the forthcoming negotiations on the agreements to carry out Title 1 of the proposed settlement legislation would be substantially impaired. The Tribe would either have to accept the proposed Compact in its entirety and give up some of its claims and legal victories without getting anything in return, or else assume the risk that the Title 1 agreements ultimately will withstand a legal challenge based on their alleged inconsistency with the Compact. Obviously, no one will want to enter into agreements whose validity is suspect. Indeed, it would be contrary to the fundamental purpose of the proposed settlement legislation to knowingly cast a cloud over, and invite litigation concerning, the validity of the essential Title 1 agreements.

The potential inconsistency between the proposed Compact and the contemplated Title 1 agreements is a crucial matter that must be addressed in the proposed settlement legislation. If ratification of the Compact is to be included in the settlement legislation, the Pyramid Lake Tribe respectfully requests the inclusion of a provision to insure that the Compact will not be used to prevent the implementation of the contemplated Title 1 agreements.

The Pyramid Lake Tribal Council is committed to doing everything possible to secure a just and reasonable settlement of the longstanding controversy that has plagued northwestern Nevada. The Tribe believes that the August 20, 1985 Draft Bill, to which all the concerned Nevada parties tentatively agreed, is a suitable vehicle for achieving that settlement. The Tribal Council's opposition to any bills that do not include sections 107(a)(8) and 204 of the August 20, 1985 Draft is predicated on its sincere belief, reached after careful and lengthy discussion and deliberation, that an overall settlement cannot be achieved unless the State of Nevada ultimately is willing to relinquish its claim to the bed of Pyramid Lake and the Truckee River within the Reservation and to agree that the Compact will not prevent the implementation of any of the voluntary agreements that are reached pursuant to Title 1 of the proposed settlement legislation. In the absence of these two crucial provisions, any settlement of the existing litigation that is reached would just create new uncertainties and invite new litigation.

The Tribal Council also urges the Committee to insure adequate funding to implement the proposed settlement. It would be terribly tragic and unfortunate if agreement finally is reached to resolve a century of conflict and litigation only to have the settlement fall apart and the fish become extinct because the essential fish recovery and enhancement program cannot be implemented.

Thank you for the opportunity of presenting this testimony.

AUGUST 20, 1985 DRAFT

ATTACHMENT A
TO
PREPARED STATEMENT OF
MICHAEL R. THORP
ATTORNEY FOR THE
PYRAMID LAKE PAIUTE TRIBE OF INDIANS
ON
S. 1558 (99TH CONG. 1ST SESS.)
BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

October 2, 1985

August 20, 1985

99th Congress
1st Session

IN THE SENATE OF THE UNITED STATES

Mr. Laxalt (for himself and Mr. Hecht) Introduces the following Bill; which was read twice and referred to the Committee on ____

____

A BILL

To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985".

TITLE I--TRUCKEE RIVER SETTLEMENT

Sec. 101. For the purposes of this title, the Congress finds that --

(1) Pyramid Lake, a desert lake into which the Truckee River flows and which has no outflow, is an important natural resource which is situated within the Pyramid Lake Indian Reservation;

(2) the fish resources of Pyramid Lake include the Lahontan cutthroat trout and the cui-ui, which are listed in 50 CFR 17.11(h) and which have been designated by the Secretary of the Interior as threatened and endangered species, respectively;

(3) rights to the waters and flows of the Truckee River are the subject of existing and prospective lawsuits involving numerous parties in Nevada, including among others the Pyramid Lake Paiute Tribe, major agricultural interests, water districts and the cities of Reno and Sparks and Washoe County, Nevada;

(4) although some of these lawsuits have resulted in decisions by the Ninth Circuit Court of-Appeals and the United States Supreme Court, such decisions have not yet resolved all controversies among the parties; and, unless pending litigation is settled, there will continue to be proceedings in the courts;

(5) these lawsuits not only will prove expensive and time consuming for all participants but also could have a profoundly adverse impact upon all the parties and the economies of Nevada;

(6) The parties to the lawsuits have diligently attempted to settle these claims and have stated to the relevant committees of the Senate and the House of Representatives their interest in settling the controversies and litigation surrounding the various claims affecting the Truckee River, Pyramid Lake and its fish resources, and Stampede Reservoir;

(7) it is the long-term interest of the United States, the State of Nevada and its political subdivisions, the State of California, the Pyramid Lake Paiute Tribe, and other communities of Nevada that the United States and the State of Nevada provide a stimulus for and assist in the

implementation of a permanent settlement of such litigation; and

(8) to the extent a settlement is facilitated by this title, settlement will--

(A) permit expensive and lengthy litigation to be resolved by mutual agreement of the parties and in a manner which accommodates to the extent possible the needs of all parties;

(B) enhance the Lahontan cutthroat trout and the cui-ui and their habitat;

(C) assist the economic development of the Pyramid Lake Paiute Tribe; and

(D) provide needed municipal and industrial water for use in the cities of Reno and Sparks and Washoe County, Nevada.

DEFINITIONS

Sec. 102. As used in this title--

(1) the term "Tribe" means the Pyramid Lake Paiute Tribe which is organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476):

(2) the term "Secretary" means the Secretary of the Interior;

(3) the term "Newlands Project" means the project authorized pursuant to the Reclamation Act of June 17, 1902 (43 U.S.C. 371, et seq.) for reclamation and irrigation of land in the Carson and Truckee River basins;

(4) the term "Washoe Project" means the Reclamation Project authorized pursuant to the Act of August 1, 1956 (43

U.S.C. 614);

(5) the term "Lower Truckee River" means that portion of the Truckee River below Derby Dam;

(6) the term "Pyramid Lake fish resources" means the Lahontan cutthroat trout and the cui-ui;

(7) the terms "enhancement" and "enhance" mean measures and the taking of measures, including natural and hatchery propagation and habitat improvement, necessary and appropriate to improve the biological status of the Pyramid Lake fish resources;

(8) the term "replacement cost" means the sum of $37.00 per acre foot during the year immediately following the date upon which the Secretary certifies that the conditions of section 107(a) have been satisfied. On each anniversary date thereafter the replacement cost shall be adjusted to reflect the percentage increase which took place the previous year in the metered rate for commercial water service charged by the entity serving the cities of Reno and Sparks, Nevada; and

(9) the term "water year" means the period commencing on October 1 of any year and ending on September 30 the following year.

EFFECT ON EXISTING RIGHTS AND AUTHORITIES

Sec. 103. (a) Nothing in this Act shall be construed as--

(1) modifying or terminating any court decree, except as provided by the provisions in subsections (b) through (h) of section 105 and section 111, including those decrees entered in the following cases:

(A) United States v. Alpine Land & Reservoir Co., Civ. No. D-183 BRT (D. Nev.);

(B) United States v. Orr Water Ditch Co., Equity No. A-3 (D. Nev.); and

(C) United States v. Truckee River General Electric Company, Civ. No. 14861 in the United States District Court for the Northern District of California (now Civ. No. S-643-LKK in the Eastern District in California), as modified by the Truckee River Agreement incorporated in and made a part of the final decree in, United States v. Orr Water Ditch Co., Equity No. A-3, in the United States District Court for the District of Nevada;

(2) diminishing or impairing any property right existing on the effective date of this title; and

(3) providing any Congressional directive binding on the State Engineer of Nevada.

(b) Nothing in this title shall be construed as prohibiting the modification or termination of any court decree upon agreement of the parties to such court decree.

WATER DELIVERIES

Sec. 104. The Secretary shall, acting through the Bureau of Reclamation, deliver annually such quantities of water to the Pyramid Lake Indian Reservation as may be necessary for the maintenance and enhancement of the Pyramid Lake fish resources, wildlife conservation, outdoor recreation, environmental quality, economic development, and other purposes. The Secretary shall be deemed to have satisfied fully this obligation only if--

(1) for the first ten-year period commencing October 1,

1978, and for each succeeding ten-year period commencing one year after the beginning of the preceding ten-year period, the average elevation of Pyramid Lake measured at the end of each water year is not less than 3,794 feet above mean sea level; and

(2) at the end of the first two-year period beginning October 1, 1988, and each succeeding two-year period the elevation of Pyramid Lake is not less than 3,786 feet above mean sea level.

WATER MANAGEMENT

Sec. 105. (a) The Secretary shall take actions as are necessary to meet his obligations under this title. In carrying out such obligations, and notwithstanding any other provision of law, the Secretary may--

(1) acquire by purchase, but not by eminent domain, private lands or interests having water rights;

(2) enter into water exchange agreements with any individual or legal entity;

(3) enter into agreements with Truckee-Carson Irrigation District for rehabilitation, betterment and operational improvement of the Newlands Project, including the T canal pilot lining project, which shall include a component for the improvement of the Stillwater Wildlife Management Area and the Carson Lake Pasture to the extent such improvement is necessary to mitigate fully the effects of such rehabilitation, betterment and operational improvement. ~~To the extent~~ such mitigation shall not require the expenditure of funds from the settlement fund created in section 108 of this title, ~~such~~

~~expenditure shall be subject to the approval of the Tribe~~;

(4) enter into such other agreements as may be necessary;

(5) conduct weather modification programs and other programs to augment the flows of the Truckee and Carson Rivers;

(6) allocate costs of the Washoe Project to development of fish and wildlife resources on a nonreimbursable basis notwithstanding the limitation on expenditures imposed by section 4 of the Washoe Project Act (43 U.S.C. 614c) or any other provision of law; and

(7) after consultation with the Administrator of the Western Area Power Administration, withdraw from commercial sale all or any portion of the Washoe Project power for any person or entity who becomes a party to the agreements referred to in section 107(a)(6) if, after such consultation, the Secretary determines that such energy is necessary to offset losses associated with the Truckee River hydroelectric powerplants of such person or entity.

(b) Notwithstanding any other provision of law and subject to agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, the Secretary shall execute a perpetual contract for the sale of water from Stampede Reservoir in the quantity set forth in sections 105(c) and 105(d) for municipal and industrial use in the cities of Reno and Sparks and Washoe County, Nevada.

(c) Upon execution of the contract and for ten years thereafter, Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on an average annual withdrawal from Stampede storage of 6,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District. To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 50,000 acre feet, or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(d)(1) After the ten years provided in subsection (c) and based upon a projected demand buildup period to be defined by the Secretary, Tribe, Sierra Pacific Power Company and the Carson-Truckee Water Conservancy District, the Carson-Truckee Water Conservancy District shall have the right to withdraw from Stampede Reservoir storage for municipal and industrial purposes, an average of 5,000 acre feet per year or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(2) The Carson-Truckee Water Conservancy District shall be provided a dry period municipal and industrial supply based on the average annual withdrawal from Stampede Reservoir storage of 15,000 acre feet, or such other amount as agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District.

(3) To protect the municipal and industrial supply, when Stampede Reservoir storage is at or below 120,000 acre feet or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water

Conservancy District there shall be no releases from Stampede Reservoir made for fishery purposes to the Lower Truckee River.

(e) Notwithstanding any other provision of law, the Secretary shall execute a perpetual contract for the sale of such water in addition to the water referred to in subsections (b) through (d) of section 105 to the Carson-Truckee Water Conservancy District from Stampede Reservoir to the extent such water is not required for the Pyramid Lake fish resources.

(f) The allocation of project costs made to municipal and industrial water supply under subsections (b) through (e) of section 105 shall be repayable to the United States in 50 years from the date the conditions of section 107 of this title have been met, under the provisions of the Federal reclamation laws, with right of prepayment, and provided further, that repayment of costs allocated to municipal and industrial water supply shall include interest on the unamortized balance of such allocations at a rate equal to the average rate (which rate shall be certified by the Secretary of the Treasury) paid by the United States on its marketable long term securities outstanding on the date of enactment of the Washoe Project Act (43 U.S.C. 614) and adjusted to the nearest one-eighth of 1 per centum.

(g) In addition, and subject to the agreement of the Secretary, the Tribe, Sierra Pacific Power Company, and the Carson-Truckee Water Conservancy District, Sierra Pacific Power Company shall have the right to accumulate Privately Owned Stored Water, as defined in the Truckee River Agreement, in Stampede Reservoir to the extent storage is available. Such waters shall be allocated their proportionate share of evaporation loss and in the event water is required to be spilled from Stampede Reservoir such privately owned stored water shall be spilled prior to any Federal water stored in said reservoir.

(h) The water sold under the provisions of subsections (b) through (g) of section 105 shall not be used for the purpose of dilution of sewage effluent; however nothing herein shall be construed to preclude the use of other water stored in Stampede Reservoir for such dilution purposes.

(i) If any of the lands or interests therein acquired under this title have appurtenant Newlands Project water rights or if any of the agreements entered into under this title provide for the transfer of Newlands Project water rights to non-Newlands Project lands or uses, the Secretary shall each year pay the Truckee-Carson Irrigation District from the funds referred to in section 108(b)(2) or from other funds all operation, maintenance, and other charges that would have been assessed if the acquisition or transfer had not occurred.

(j) The Secretary shall make payments to the State of Nevada and its political subdivisions each year from the funds referred to in section 108(b)(2) or from other funds in lieu of real property taxes or other assessments that would have otherwise been assessed with respect to lands and interests in lands acquired pursuant to this title.

(k) Notwithstanding any other provisions of law, the Secretary is authorized to file applications for permits to change the point of diversion, place, means, manner, or purpose of use of any water which the Secretary may acquire under this title.

(l) The authority of the Secretary provided in this section shall not be construed to preclude the existence of that authority under other provisions of law.

FISH PROPAGATION

Sec. 106. (a) In addition to the obligations referred to in section 104, the Secretary shall--

(1) within three years after the date upon which the conditions of section 107 of this title have been met, formulate and commence a fish enhancement program to--

(A) provide such measures as are necessary to recover the Lahontan cutthroat trout and cui-ui of Pyramid Lake to the point at which they are no longer classified as "endangered" or "threatened" pursuant to the Endangered Species Act (16 U.S.C. 1531, et seq.); and

(B) restore to the maximum extent practicable natural spawning of the Lahontan cutthroat trout and cui-ui in the Lower Truckee River; and

(2) continue to operate and maintain--

(A) the Lahontan National Fish Hatchery or any appropriate replacement fish hatchery facilities;

(B) fish hatchery facilities and improvements thereto situated on the Pyramid Lake Indian Reservation, the construction of which was or is federally supported; and

(C) the fishway and fish facilities at Marble Bluff Dam.

(b) The fish enhancement program provided in subsection (a)(1) shall consist of one or more of the following programs and shall be designed to enhance the Pyramid Lake fish resources in the most cost-effective manner:

(1) a program designed to facilitate and maintain physical restoration of the Lower Truckee River;

(2) modification and/or replacement of the fishway and fish facilities at Marble Bluff Dam;

(3) construction of additional fish hatcheries and improvements to existing hatcheries on the Pyramid Lake Indian Reservation;

(4) within the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Tribe and the Secretary; and

(5) outside the Pyramid Lake Indian Reservation, such other programs as may be agreed upon by the Secretary, the Tribe, the State of Nevada, and other affected parties.

(c) Nothing in this title shall be a limitation on spending authority under the Act of November 2, 1921 (25 U.S.C. 13) or any other Act of Congress.

(d) For the purposes of subsection 106(a)(2)(B), a hatchery is federally supported if moneys appropriated by Congress were or are used to pay, in whole or in part, for its construction.

(e) The Secretary shall undertake such biological studies as are agreed to by the Tribe to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

EFFECTIVE DATES

Sec. 107. (a) The provisions of sections 104, 105, 106, 110, and 111 of this title and title II of this Act shall not take effect until--

(1) Sierra Pacific Power Company, Washoe County, the Tribe and the Secretary have executed an agreement providing for the withdrawal, modification or other appropriate disposition of the water rights requested under Application Nos. 47047, 47121, 47209, and 47264 pending before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

(2) the State Engineer of Nevada approves, subject to the provisions of the agreement referred to in subsection (a)(1), the applications of the Tribe, Nos. 48061, and 48494, for permits to appropriate waters of the Truckee River;

(3) the State of Nevada agrees to contribute the amount referred to in section 106(b)(1);

(4) the following actions or proceedings are dismissed with prejudice or otherwise finally concluded in accordance with the agreement of the parties thereto:

(A) Pyramid Lake Paiute Tribe v. California, Civ. S-81-378-RAR, United States District Court, Eastern District of California;

(B) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed amended complaint;

(C) the Tribe's appeal in United States v. Orr Water Ditch Co., No. 85-1880, Ninth Circuit Court of Appeals;

(D) the Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr

Water Ditch Co., Equity A-3-WEC, United States District Court, District of Nevada, and United States v. Alpine Land & Reservoir Co., D-183-BRT, in the United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands;

(E) Pyramid Lake Paiute Tribe of Indians v. Hodel, No. R-85-197-BRT, United States District Court for the District of Nevada; provided, however, that any final disposition of this action other than a dismissal with prejudice shall require the agreement of the Truckee-Carson Irrigation District; and

(F) Truckee-Carson Irrigation District v. United States, No. 512-7 (Ct. Cl.);

(5) the operating criteria has been agreed upon, adopted and approved as provided in section 111;

(6) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, obtained ratification of such agreement from a court of competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under subsections (b), (c), (d), and (g) of section 105 and section 106(a)(1);

(7) all pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy Regulatory Commission, have been withdrawn; and

(8) The state of Nevada relinquishes any claim it may have to title to or ownership of the bed of Pyramid Lake and the bed of the Truckee River within the exterior boundary of the Pyramid Lake Indian Reservation.

(b)(1) Subject to the provisions of paragraph (2) and except as provided in section 108(g) and section 109(e), all the conditions of section 107(a) shall be accomplished within one year from the date of the enactment of this title or this Act shall terminate and shall be of no further force or effect.

(2) Upon the agreement of the Secretary and the Director of the Nevada Department of Conservation and Natural Resources the time limit provided in paragraph (1) may be extended for a period not to exceed six months.

SETTLEMENT FUND

Sec. 108. (a) There is hereby established in the Treasury of the United States a fund, to be known as the "Pyramid Lake Settlement Fund", to be used to carry out the purposes provided in this title.

(b) The settlement fund shall consist of--

(1) $8,000,000 to be contributed by the State of Nevada;

(2) amounts to be appropriated to the settlement fund; and

(3) interest accruing to the settlement fund pursuant to subsection (e).

(c) There is hereby authorized to be appropriated to the settlement fund the sum of $21,000,000. Funds appropriated pursuant to this section shall remain available until expended.

(d) The source of any moneys expended from the settlement fund shall be deemed to be one-half from the amount contributed to the settlement fund by the State of Nevada and one-half from funds appropriated pursuant to subsection (c) until an aggregate of $16,000,000 shall have been expended. All moneys expended in excess of $16,000,000 shall be deemed to be Federal funds.

(e) Such portion of the settlement fund as the Secretary determines is not required to meet current withdrawals shall be invested by the Secretary of the Treasury at the request of the Secretary in public debt securities of the United States with maturities suitable to the needs of the settlement fund, as determined by the yields on outstanding marketable obligations of the United States of comparable maturities.

(f) In the event the Secretary fails to obligate the sum of $16,000,000 to implement the fish enhancement program required by section 106(a)(1) within five years after the date upon which the conditions of section 107 have been met, or within such additional period as may be agreed upon by the Secretary and the Tribe, the amount representing the difference between $16,000,000 and the amount obligated, together with the interest thereon, shall be paid and credited to the Tribal Trust Fund established by section 109 of this title.

(g) None of the moneys referred to in this section may be expended until the conditions of section 107 have been met. In the event these conditions are not met, the moneys referred to in subsection 108(b)(1) together with any interest earned thereon shall be returned to the State of Nevada and any moneys referred to in subsection (c) together with any interest thereon shall be deposited in the Treasury of the United States as miscellaneous receipts.

TRIBAL TRUST FUND

Sec. 109. (a) There is hereby authorized to be appropriated the sum of $10,000,000 to be deposited in the Treasury of the United States in a fund to be known as the "Pyramid Lake Paiute Tribe Trust Fund". Such sum shall be held in trust for the Tribe, invested in interest-bearing deposits and securities, including securities of the United States, and expended as specified in this section.

(b) There shall be added to the tribal trust fund any amounts credited to the tribal trust fund under section 108(f). Until such time as the Lahontan cutthroat trout and the cui-ui shall no longer be listed as having been designated as either a threatened species or an endangered species, any moneys credited to the tribal trust fund pursuant to section 108(f) and any income earned thereon shall be expended only for the purpose of enhancing the Pyramid Lake fish resources in accordance with a plan approved by the Secretary.

(c) Except as provided in subsection (b) with respect to the amounts credited to the tribal trust fund under section 108(f), principal and income from the tribal trust fund may be used for capital expenditures relating to the economic development of the Pyramid Lake Indian Reservation. Income from the tribal trust fund may be used for operating expenses associated with economic development of the Tribe or tribal administrative purposes.

(d) The amount referred to in section 109(a) shall bear interest from the date of the enactment of this Act.

(e) None of the moneys referred to in this section may be expended unless and until the conditions of section 107 have been met. In the event such conditions are not met, the moneys referred to in this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

DAMAGES

Sec. 110. (a) Subject to the conditions provided in subsection (b), the Secretary shall, in the event the Secretary fails to meet the obligations in section 104, pay damages to the governing body of the Tribe in an amount equal to the replacement cost of such quantities of water as are necessary to meet those obligations or such lesser amount as may be agreed to by the Tribe.

(b)(1) The United States shall have no right to recover any portion of such damages from any person or entity, and the provisions of this section shall constitute the exclusive remedy of the Tribe for the failure to maintain the Lake levels as provided in section 104.

(2) The damages provided for in this section shall not exceed in any one year the sum of $5,000,000 for damages for the failure to meet the requirements of section 104(a) and the sum of $2,000,000 for damages for the failure to meet the requirements of section 104(b) or such lesser amount as may be agreed to by the governing body of the Tribe. Provided that beginning on October 1, 1989, and annually thereafter the sums set forth in this subsection shall be adjusted annually to reflect the increase in the consumer price index for the previous twelve month period.

THE NEWLANDS RECLAMATION PROJECT

Sec. 111. (a) Notwithstanding any other provision of law, all repayment obligations owing to the United States or one of its agencies by the Truckee-Carson Irrigation District shall be cancelled by the Secretary and the Secretary shall at the request of the District issue a certificate acknowledging that the lands in the District are free of the acreage and ownership and full cost pricing provisions of Federal Reclamation law provided that Truckee-Carson Irrigation District shall have the right to collect all unpaid construction costs. Such certificate shall be in a form suitable for entry in the land records of Churchill County and Lyon County, Nevada.

(b)(1) Truckee-Carson Irrigation District shall be responsible for the operation and control of the Newlands Project lands, works and rights subject to such reasonable rules and regulations as to repairs and maintenance of project facilities as the Secretary may adopt.

(2) Project operating criteria shall be agreed upon and adopted by the Secretary and Truckee-Carson Irrigation District, and approved by the Tribe and the State of Nevada. Project operating criteria shall be consistent with the provisions of the final decrees ~~that have been entered~~ in *United States of America* v. *Orr Water Ditch Co.*, and *United States* v. *Alpine Land & Reservoir Co.*, Nos. Equity A-3 and D-183 BRT in the United States District Court for the District of Nevada, and to the extent applicable to the Newlands Project, Nevada law.

OTHER STATUTES AFFECTED

Sec. 112. (a) All actions taken by the Secretary pursuant to sections 104, 105, 106, 107, and 111 of this title shall be exempt from the requirements of the National Environmental Policy

Act (42 U.S.C. 4321, et. seq.).

(b) ~~Subject to the provisions of paragraph (2),~~ A~~a~~ctions under sections 104, 105, 106, 107, and 111 shall be recognized and deemed to be in full compliance with the Endangered Species Act (16 U.S.C. 1531, et. seq.) with respect to the Pyramid Lake fish resources and may be taken without regard to the requirements of the Act.

(c) Nothing in this Act shall be deemed to prevent the seeking of further appropriations for the purpose of constructing or modifying facilities or structures to enhance the Pyramid Lake fish resources.

(d) Nothing in this Act shall be deemed to exempt the Secretary or any other Federal agency from the requirements of the National Environmental Policy Act or the Endangered Species Act with regard to other programs or actions.

APPLICATION OF INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT

Sec. 113. The obligations of the Secretary to implement the fish enhancement program on the Pyramid Lake Reservation pursuant to section 106 shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

TITLE II--CONSENT AND APPROVAL OF CONGRESS TO THE CALIFORNIA-NEVADA INTERSTATE COMPACT

CONGRESSIONAL CONSENT

Sec. 201. The consent and approval of Congress is given to the California-Nevada Interstate Compact between the States of California and Nevada. Such compact reads as follows:

TEXT OF COMPACT INSERTED

PROVISIONS BINDING ON THE UNITED STATES

~~RESERVATION OF RIGHTS~~

Sec. 202. The following provisions of the foregoing Compact shall be binding on the agencies, wards and instrumentalities of the United States of America:

Article V, Section D
Article V, Section F
Article VI, Subsection B.1
Article VI, Subsection B.3
Article VI, Subsection B.4
Article VI, Section D
Article VII, Section A
Article VII, Section B
Article VII, Section C
Article VII, Section D
Article VII, Section E
Article VIII, subsection A.4(b)
Article VIII, Subsection B.1
Article VIII, Subsection B.5

EFFECTIVE DATE

Sec. 203. The consent granted by this title shall take effect on the date the Secretary certifies that the conditions of section 107(a) of Title I have been satisfied.

EFFECT ON TITLE I

Sec. 204. Nothing contained in this title shall be construed to prevent the implementation of any agreements that are entered into or measures taken pursuant to Title I of this Act. The provisions of the Compact shall be construed in a manner that is consistent with the purposes of Title I of this Act.

PROPOSED CHANGES TO H.R. 3213

ATTACHMENT B

TO

PREPARED STATEMENT OF

MICHAEL R. THORP

ATTORNEY FOR THE
PYRAMID LAKE PAIUTE TRIBE OF INDIANS

ON

H.R. 3213 (99TH CONG. 1ST SESS.)

BEFORE THE HOUSE INTERIOR AND
INSULAR AFFAIRS COMMITTEE

October 3, 1985

On August 20, 1985, representatives of the Nevada negotiating parties met in Reno to discuss proposed changes to H.R. 3213. The meeting was attended by representatives of the Pyramid Lake Tribe, the State of Nevada, the Truckee-Carson Irrigation District, the Sierra Pacific Power Company and the Carson-Truckee Water Conservancy District. A representative of the Bureau of Reclamation was also present, but was not authorized to negotiate or to state the position of the federal government or the Interior Department.

Tentative agreement was reached on several changes to H.R. 3213 among the Nevada negotiating parties. (Those changes were communicated to the Interior Department, but we have not heard their response at the time this statement is written.) The main purpose of this attachment is to describe those changes for the benefit of the Committee. The changes are important since the Pyramid Lake Tribal Council has endorsed the August 20, 1985 Draft but opposed enactment of H.R. 3213 in its current form. While most of the changes have been agreed to by the Nevada negotiating parties, there are a few that the Tribe is proposing which differ from the language of the August 20, 1985 Draft. I will specify those proposed changes which have not been accepted by the other Nevada negotiating parties. A copy of the entire August 20, 1985 Draft is Attachment A to my testimony.

1. Section 102(8)

This definition should be revised to read as follows:

> The term "replacement cost" means the sum of $37.00 per acre foot during the year immediately following the date upon which the Secretary certifies that the conditions of Section 107(a)

> been satisfied. On each anniversary date thereafter the replacement cost shall be adjusted to reflect the percentage increase which took place the previous year in the metered rate for commercial water service charged by the entity serving the Cities of Reno and Sparks, Nevada.

The current definition of "replacement cost" in H.R. 3213 as "the then current municipal and industrial water rate charged to the Carson-Truckee Water Conservancy District by the Secretary pursuant to Section 105(b)" is far too indefinite. If this definition is used, the replacement cost could vary considerably depending upon the terms of any agreement which ultimately may be reached for the sale of M & I water from Stampede Reservoir. Since the definition of "replacement cost" is the key to the damage provision contained in Section 110 and thus, enforcement of the Secretary's obligation under Section 104, it is of paramount importance that the definition be as definite as possible.

The $37.00 figure was arrived at after extensive negotiation with the Department of the Interior and reflects a fair measure of damages in the event that the Secretary does not fulfill his obligations under Section 104. Since the settlement legislation will be permanent, it is imperative that any damage figure which is set be indexed to protect the Tribe against inflation. In this case, the damage figure has been indexed to reflect the percentage increase in the metered rate for commercial water service charged by the entity serving the Cities of Reno and Sparks, Nevada. In that way, the value of the water which is to be delivered to Pyramid Lake will be tied directly to the value of commercial water in the Northern Nevada area.

2. Section 102(10)

The definition of "dry period" should be deleted. The Tribe does not agree that a "dry period" is indicated when Lake Tahoe is at or below an elevation of 6225.25 feet. The definition of "dry period" should be left to agreement of the parties in connection with the reservoir management agreement required pursuant to Section 107(6). It is our understanding that Sierra Pacific Power Company, the entity which originally proposed this definition, is now agreeable to having the definition deleted from the legislation.

3. Section 103(a)

In the first line of this section the word "title" should be changed to "Act." In Section 103(a)(1), the phrase "subsections (b) and (c) of Section 105" should be changed to "subsections (b) through (h) of Section 105. These changes have previously been agreed to by all the parties to the settlement legislation.

4. Section 105(a)(3)

At the beginning of this subsection, the phrase "for rehabilitation and betterment" should be changed to "for rehabilitation, betterment and operational improvement." This change has been agreed to by all of the parties to the settlement legislation. The last portion of the last sentence of subsection 105(a)(3) should be revised to read "the effects of such rehabilitation, betterment and operational improvement." Following that sentence, the following sentence should be added: "Such mitigation shall not be funded from the settlement fund created in Section 108 of this title." The purpose of that addition is to insure that the settlement fund, which is already seriously deficient, is utilized, as intended, for the protection, recovery and enhancement of the Pyramid Lake fishery and is not diverted to other uses. Although this change differs from the language in the August 20, 1985 Draft, it accomplishes the same purpose from the Tribe's standpoint and I believe it will be acceptable to the the Tribal Council. I believe that the addition I am now proposing is preferred by the Truckee-Carson Irrigation District.

5. Section 105(a)(7)

The reference to Section 107(a)(10) should be changed to Section 107(a)(6).

6. Section 105(b)

The word "quantity" should be changed to "quantities" and the phrase "or such other quantities as are agreed to" should be added after "sections 105(c) and 105(d)." These changes are not included in the August 20, 1985 Draft, but are necessary to avoid ambiguities and to carry out the parties' intent. The phrase found at the end of this subsection "and not for the purpose of dilution of sewage effluent" should be deleted. This deletion has been agreed to by all of the parties to the settlement negotiations because the same subject is handled by adding a new Section 105(h).

7. Section 105(d)(1)

In this subsection, the reference to "parties" and the parentheses around "Secretary, Tribe, Sierra Pacific Power Company" should be deleted. After the first reference to Sierra Pacific Power Company, the term "and Carson-Truckee Water Conservancy District," should be added. This change has been agreed to by all of the parties to the settlement negotiations.

8. Section 105(d)(2)

The reference to "district" should be changed to "Carson-Truckee Water Conservancy District" for clarification.

9. Section 105(f)

The reference to "paragraphs (1) through (4) of subsection (b) of Section 105" should be changed to "subsections (b) through (e) of Section 105." This change has been agreed to by all of the parties to the settlement negotiations.

10. Section 105(g)

At the beginning of this subsection, the words "in addition, and" should be inserted. In addition, the term "privately owned stored water" should be capitalized and following the first reference to that term, the words "as defined in the Truckee River Agreement" should be added.

11. Subsection 105(h)

A new subsection 105(h) should be added to read as follows:

> The water sold under the provisions of subsections (b) through (g) of Section 105, shall not be used for the purpose of dilution of sewage effluent; however, nothing herein shall be construed to preclude the use of other waters stored in Stampede Reservoir for such dilution purposes.

This addition has previously been agreed to by all of the parties to the settlement negotiations.

Subsections 105(h) through (k) should then be renumbered as subsections 105(i) through (l).

New subsection 105(k) should be revised to change the term "application with the State Engineer of Nevada for a permit" to "applications for permits." This change has previously been agreed to by all of the parties to the settlement negotiations.

12. Section 106(e)

This subsection should be revised to read as follows:

> The Secretary shall undertake such biological studies as are agreed to by the Tribe to determine the flow requirements in the Lower Truckee River for the Pyramid Lake fish resources.

This change has previously been agreed to by all of the parties to the settlement negotiations.

13. Section 107(a)

This section, which is perhaps the key to the settlement legislation, needs extensive revision. The Pyramid Lake Tribe proposes that this section read as follows:

EFFECTIVE DATES

Section 107(a): The provisions of Sections 104, 105, 106, 110 and 111 of this Title and Title II of this Act shall not take effect until--

(1) Sierra Pacific Power Company, Washoe County, the Tribe and the Secretary have executed an agreement providing for the withdrawal, modification or other appropriate disposition of the water rights requested under Application Nos. 47047, 47121, 47209 and 47264 pending before the State Engineer of Nevada for permits to appropriate waters of the Truckee River;

(2) The State Engineer of Nevada approves, subject to the provisions of the agreement referred to in subsection (a)(1), the applications of the Tribe, Nos. 48061 and 48494, for permits to appropriate waters of the Truckee River;

(3) The State of Nevada agrees to contribute the amount referred to in Section 108(b)(1);

(4) The following actions or proceedings are dismissed with prejudice or otherwise finally concluded in accordance with the agreement of the parties thereto:

(A) Pyramid Lake Paiute Tribe v. California, Civ. S-81-378-RAR, United States District Court, Eastern District of California;

(B) United States v. Truckee-Carson Irrigation District, 2987-RCB, United States District Court, District of Nevada, including those matters asserted in the Tribe's proposed Amended Complaint:

(C) The Tribe's appeal in United States v. Orr Water Ditch Co., No. 85-1880, 9th Circuit Court of Appeals;

(D) The Tribe's and the Secretary's appeals from the State Engineer's ruling in United States v. Orr Water Ditch Co., Equity A-3-WEC, United States District Court, District of Nevada, and United States v. Alpine Land and Reservoir Co., D-183-BRT, United States District Court for the District of Nevada, granting the applications to transfer Newlands Project water rights to other Newlands Project lands;

(E) Pyramid Lake Paiute Tribe of Indians v. Hodel, No. R-85-197-BRT, United States District Court for the District of Nevada; provided, however, that any final disposition of this action other than a dismissal with prejudice shall require the agreement of the Truckee-Carson Irrigation District; and

(F) Truckee-Carson Irrigation District v. United States, No. 512-7 (Ct. Cl.);

(5) the operating criteria has been agreed upon, adopted and approved as provided in Section 111;

(6) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, and the Secretary have executed an agreement (and, if necessary, obtained ratification of such agreement from a court of competent jurisdiction, providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under subsections (b), (c), (d) and (g) of Section 105 and Section 106(a)(1);

(7) All pending motions filed by the Tribe in Doc. No. E-9530 before the Federal Energy Regulatory Commission, have been withdrawn; and

(8) The State of Nevada relinquishes any claim it may to title to or ownership of the bed of Pyramid Lake and the bed of the Truckee River within the exterior boundary of the Pyramid Lake Indian Reservation.

All of the changes to subsection 107(a) as reflected above have been agreed to by all of the parties to the settlement negotiations except that the State of Nevada has refused to agree to subsection 107(a)(8). The disagreement on this subject between the Tribe and the State of Nevada is discussed in my Prepared Statement.

14. Subsection 107(b)(1)

The term "subsections (g) and (h) of Section 108" should be changed to "Section 108(g)." This change is for clarification and has been agreed to by all of the parties to the settlement negotiations.

15. Section 108(f)

The last portion of this subsection should be revised to read as follows: "The amount representing the difference between $16,000,000 and the amount obligated, together with the interest thereon, shall be paid and credited to the Tribal trust fund established by Section 109 of this title." This change is to clarify the subsection and has previously been agreed to by all of the parties to the settlement negotiations.

16. Section 110(b)(2)

The reference to Section 104(a) should be changed to Section 104(1) and the reference to Section 104(b) should be changed to Section 104(2).

A new sentence should be added at the end of this subsection to read as follows: "Provided that beginning on October 1, 1989 and annually thereafter, the sums set forth in this subsection shall be adjusted annually to reflect the increase in the Consumer Price Index for the previous 12 month period."

This addition is required in order to properly index the damage ceiling against future inflationary pressures.

17. Section 111(b)(2)

The last sentence of this subsection should be eliminated. It is axiomatic that the project operating criteria will have to be consistent with the final decrees in United States v. Orr Water Ditch Co. and United States v. Alpine Land and Reservoir Co. Therefore, any further reference to those decrees is unnecessary. The Pyramid Lake Tribe does not agree that project operating criteria must or should be subject to Nevada law. This provision would at least arguably change existing law to the detriment of the Pyramid Lake Tribe. It should be eliminated from the proposed settlement legislation so that the parties are left free to negotiate project operating criteria based upon existing conditions and their current bargaining positions.

This proposed change principally affects the Tribe and the Truckee-Carson Irrigation District (TCID). The Tribe and TCID have not yet been able to reach agreement on a mutually acceptable provision.

18. Section 112

This section should be eliminated. If this provision is included in the legislation, the Tribe's ability to collect damages for the Secretary's failure to deliver certain quantities of water in accordance with Section 104 of the Act, would be rendered illusory. In order to make the damage provision, and, therefore, §104 meaningful, this section must be eliminated. Section 112 also negates other provisions of the bill under which the Secretary might become obligated to undertake other projects such as a rehabilitation and betterment program for the Newlands Project, the acquisition of water rights, the modification of the Marble Bluff Dam and Fishway, and mitigation of the wildlife areas adjacent to the Newlands Project.

The Nevada parties have agreed that Section 112 should be eliminated.

19. Section 113 and 114

Sections 113 and 114 should be renumbered Sections 112 and 113 to reflect the elimination of previous Section 112.

20. Section 204

This additional provision, which the Tribe believes is absolutely critical to achieving the purposes of the settlement legislation was proposed by the Tribe at the August 20, 1985 meeting and has been accepted by all of the Nevada parties except the State of Nevada. The reasons for the Tribe's insistence on this addition are discussed in my prepared statement.

SPECIFIC COMMENTS OF THE
PYRAMID LAKE PAIUTE TRIBE OF INDIANS
ON TITLE II OF S. 1558
THE CALIFORNIA-NEVADA INTERSTATE COMPACT

ATTACHMENT C

TO

PREPARED STATEMENT OF

MICHAEL R. THORP

ATTORNEY FOR THE PYRAMID LAKE
PAIUTE TRIBE OF INDIANS

ON

S. 1558 (99TH CONG. 1ST SESS.)

BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

October 2, 1985

The Tribe's comments on the specific provisions of the proposed Interstate Compact are as follows:

Article I

The significant federal investments and federal interests in the Truckee, Carson and Walker River watersheds demand that the United States assume a full participating role in the Compact. The purposes article should be modified to recognize such a role if the Compact is to be binding on the United States and the affected Indian tribes.

Article III

This Article should be modified to recognize rights of the United States and of the Indian tribes, including the Pyramid Lake Tribe, which are affected by the proposed Compact.

Article IV

Because of the substantial federal interest in the areas affected by the Compact, this Article should be revised to permit full and equal representation on the Compact Commission by the federal government. Each state and the federal government should be given an equal vote on all matters coming before the Commission with each party having a right to veto. Moreover, the formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Paiute Tribe for Truckee River water. The Compact does not provide, however, for Tribal representation. Therefore, the article should be revised to provide for representation of the Pyramid Lake Tribe on the Compact Commission.

Article V

This Article deals with the allocation of water within the Lake Tahoe basin. The major provision of Article V permits total gross diversions of 34,000 acre feet annually for use within the Lake Tahoe basin of which 23,000 acre feet are allocated to California and 11,000 acre feet are allocated to Nevada. The allocation of 34,000 acre feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would develop additional water from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the out-flow works which restricts the rate of flow between elevations 6225 and the low water mark of 6223 feet. It is doubtful, however, whether the overflow weir will ever be built. The 34,000 acre foot allocation within the Lake Tahoe basin should be reassessed in view of this contingency.

Article V results in a taking of the Pyramid Lake Tribe's reserved water right to the unappropriated waters of the Tahoe and Truckee River basins. The Federal District Court for the Eastern District of California has ruled that the Tribe's claim to such unappropriated water is not barred by res judicata under the Supreme Court's 1983 decision in Nevada v. United States. The Tribe's claims to the unappropriated waters in California are not saved or protected either by Article XVIII(C) or Article XXI. The protection afforded by Article XVIII(C) is expressly limited to suits to establish rights within the allocations to each state. Under this provision, the Tribe would be able to establish its right to the unappropriated waters in Nevada, but not in California. The protections afforded by Article XXI are expressly made subject to the provisions made binding on the United States and Indian tribes in Article XXII which include the articles allocating the unappropriated waters of the Tahoe and Truckee Basins to California.

Article V also confirms to United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet. However, storage rights of the United States in Lake Tahoe run to the maximum elevation of Lake Tahoe as expressed in the 1915 Tahoe decree. The figure 6229.1 feet is not descriptive of the maximum storage rights of the United States as provided in the 1915 decree, but is mentioned in the agreement known as the Truckee River Agreement of June 13, 1935. Therefore, the storage rights of the United States in Lake Tahoe stated in the proposed Compact should be as those rights are defined in the 1915 Lake Tahoe Decree. Section C of Article V is in conflict with existing court decrees and should be deleted.

Subsection F of Article V should also be modified. That subsection imposes limitations and constraints on possible pumping from Lake Tahoe for the benefit of downstream users in the event of a drouth emergency. This provision may make it more difficult to reach agreement or might conflict with an agreement on an overall river management plan which would include the possibility of pumping from Lake Tahoe during drouth emergencies.

Article VI

This Article of the proposed Compact allocates the waters of the Truckee River. There are several things wrong with the proposed allocation.

First, Article VI fails to recognize that the waters of the Truckee River are already fully appropriated. By failing to recognize that the Pyramid Lake Tribe has a legitimate claim to a reserved water right to the unappropriated water of the Truckee River and that the Pyramid Lake Fishery is currently utilizing and relying upon that water, the Compact allocates additional water, primarily to the State of California. For example, California is given the right to divert 10,000 acre feet per year, which may be stored when the flow in the channel of the Truckee River exceeds the Floriston rates of 500 or 400 cubic feet per second. Moreover, California would be allowed to develop additional yields of water subject to the then existing beneficial uses in California. The beneficial use recognized in the Compact for this purpose for the Pyramid Lake Indian Reservation, however, would be the amount stated in the Orr Ditch Decree for agricultural use plus such additional domestic or municipal water as may then have been developed. No recognition of water for fishery purposes is included.

Thus, the allocation set forth in Article VI of the Compact is in direct conflict with the reserved water right of the Pyramid Lake Tribe to the unappropriated water of the Truckee River for fishery purposes. In this respect, Article VI is subject to the same deficiency as Article V. It is also in direct conflict with the Endangered Species Act as that Act requires maintenance and preservation of the water currently being used to maintain the endangered and threatened species of Pyramid Lake.

Article VI also allocates to California 6,000 acre feet annually from the conservation yield of Stampede Reservoir. This provision is in direct conflict with the federal government's current policy to utilize the waters of Stampede Reservoir for maintenance of the Pyramid Lake Fishery, with the provisions of the Endangered Species Act and with the final judgment entered in Carson-Truckee Water Conservancy District v. Secretary of the Interior, CV-R-76-152-GJS (D. Nevada).

Article VII

This Article allocates the waters of the Carson River. This article is unacceptable because it would increase upstream acreage on the Carson River with rights ahead of the Newlands Reclamation Project by approximately 9,000 acres. This increase is not acceptable because it would make necessary greater diversions from the Carson River, therefore resulting in less Carson River water reaching the Newlands Reclamation Project. This would require greater diversions from the Truckee River to the Newlands

Project to make up the deficiency and would adversely affect Pyramid Lake.

The Pyramid Lake Tribe asked its expert hydrologic consultant, Stetson Engineers, Inc., to prepare a report analyzing and comparing the Carson River provisions of the proposed Compact with the upper Carson River water rights under the 1980 Final Decree in United States v. Alpine Land & Reservoir Co. Stetson's results are reported in its letter of September 27, 1985 to Tribal Chairman Wilfred Shaw, a copy of which is attached. Stetson concluded that the proposed compact provides much more water to the lands of the Upper Carson River in both Nevada and California than the water rights for those lands in the Final Decree. This over-allocation and waste is very detrimental to Pyramid Lake because it would mean that less Carson River water will flow into Lahontan Reservoir and consequently that more Truckee River water will be diverted to the Newlands Project.

This Article should be rewritten to provide for recognition of the final decree in United States v. Alpine Land and Reservoir Company. That decree and the operating criteria and procedures for the Newlands Reclamation Project make plain that the waters of the Carson River are fully appropriated. The Compact should not allow any additional development of water in the Carson River basin.

Article XI

This Article deals with the coordination of reservoirs. It authorizes the Compact Commission to prepare plans for the coordination of reservoirs. The parties to the Truckee River-Pyramid Lake settlement negotiations have concluded that a program for coordination of the reservoirs, especially Lake Tahoe and Stampede Reservoir, is essential to achieving a negotiated settlement. It would appear that any settlement reached by the parties with regard to reservoir management could be overridden by the Compact Commission at a later time. This would be unacceptable and Article XI should be amended to insure that any reservoir coordination agreement reached in connection with the Truckee River-Pyramid Lake settlement would not be subject to being changed by the Compact Commission.

Articles XXI and XXII

Article XXI purports to protect the rights of the United States and its wards. However, Article XXII, which is excepted from the coverage of Article XXI, requires that the United States agree that the 14 critical paragraphs of the Compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian water rights for Pyramid Lake. Moreover, through cross references to other sections in the Compact, the United States would be bound to still other provisions. Article XXII (3) therefore should be deleted.

STETSON ENGINEERS INC.

CIVIL AND CONSULTING ENGINEERS

3104 East Garvey Avenue
West Covina, California 91791
(818) 967-6202

34700 Coast Highway, Suite 202
Capistrano Beach, California 92624
(714) 240-7767

2171 E. Francisco Blvd., Suite K
San Rafael, California 94901
(415) 457-0701

REPLY TO: San Rafael

1336

September 27, 1985

Mr. Wilfred Shaw
Chairman of Pyramid Lake Paiute Tribe
P.O. Box 256
Nixon, Nevada 89424

Dear Mr. Shaw:

We have reviewed the portion of California-Nevada Insterstate Compact relating to the Carson River Basin. Provisions are made under the Compact to allocate the water of the Carson River and its tributaries in the order of priority between the States of California and Nevada. As you know, the California-Nevada Interstate Compact has not been ratified by the Congress of the United States.

We have also reviewed the Final Decree in United States v. Alpine Land and Reservoir Company, et al., Equity No. D-183 BRT, hereinafter, referred to as Alpine Decree. The decree deals with the adjudication of water rights on the Carson River and its tributaries in both the States of California and Nevada. The Alpine Decree has been in effect and court appointed Water Masters have been administering the provisions of that Decree.

In comparing the provisions of the Interstate Compact in the allocation of Carson River water with those provisions decreed under the Alpine decision, we find a number of discrepancies in the Compact. If the Compact is administered in its present form, it will affect the availability of the Carson River water to the Newlands Project and consequently affect the availability of Truckee River water for fishery in the lower reaches of Truckee River and Pyramid Lake. The provisions for allocation of the water of Carson River and its tributaries under the Interstate Compact and the Alpine Decree are briefly reviewed, as follows.

The Interstate Compact provides the right to divert from the natural flow of the Carson River and its tributaries for existing non-irrigation uses and for direct irrigtion use commencing on March 15 and ending on October 31 of each year. The diversion rights of the Carson River are divided between California and Nevada in the following manner.

1. The allocation to the State of California is based on diversions from the West Fork and East Fork of the Carson River and thier tributaries.

a. The right to divert from the natural flow of the West Fork Carson River and its tributaries is limited to 3.0 cubic feet per second (cfs) per 100 acres of irrigable lands. The area of irrigable lands with diversion rights on the West Fork Carson River and its tributaries in California were determined to be approximately 5,600 acres. The flow rates may vary from 3.0 cfs on a daily basis so long as the aggregate flow of water over a 30-day period averages to about 3.0 cfs per 100 acres of irrigable lands or 168 cfs for the area as a whole. Based on the limit of 3.0 cfs per 100 acres, the amount of water that potentially can be diverted during the irrigation season may total to 13.75 acre-feet per acre, provided the supply of water would be available in the West Fork Carson River and its tributaries. Based on established greater rate of diversion, maximum diversion allowance of 185 cfs is provided in the Compact for this area.

b. The right to divert from the natural flow of the East Fork Carson River and its tributaries for existing non-irrigation uses and for direct irrigation use is also 3.0 cfs per 100 acres of irrigable lands. The irrigable lands for this area were determined to be approximately 3,820 acres. The total diversion from the East Fork Carson River and its tributaires in California is limited to 115 cfs. Again, the amount of water that can be potentially diverted during the irrigation season may reach up to 13.75 acre-feet per acre provided there is an adequate supply of water in the East Fork Carson River.

2. The allocation to the State of Nevada was based on diversions from the Carson River and its tributaries for use on presently irrigated lands located above Lahontan Reservoir. The area of irrigated lands in this reach of the Carson River was determined to be approximatley 41,320 acres. The right to divert water from the natural flow of the Carson River and its tributaries is limited to an average rate of 3.0 cfs per 100 acre of irrigated land or a total of 1,220 cfs. The diversions are limited to the irrigation season extending from March 15 through October 31 of each year. The aggregate diversion is limited to 1,220 cfs in Nevada, upstream of Lahontan Reservoir, provided that the flow measured at the points of diversion do not exceed 700 cfs on the East Fork Carson River, 300 cfs on the West Fork Carson River, and 220 cfs on the main Carson River below the confluence of the East and West Forks. Assuming that there would be an adequate supply of water to meet a diversion demand of 3.0 cfs per 100 acres through the irrigation season, then the amount of water that can be potentially diverted for this purpose may reach up to 13.75 acre-feet per acre.

Part of the water diverted from the Carson River and its tributaries for irrigation is returned back to the main course by drainage and other means which, in turn becomes available for diversion in the lower reaches of the river. Based on the diversion limits provided in the Interstate Compact, for the Carson Basin, the water duty may reach up to 13.75 acre-feet per acre of irrigated lands in California and Nevada upstream of Lahontan Reservoir. The water duty would remain the same for the land independent of the soil characteristics.

The Alpine Decree provides for varying diversion limits from the Carson River and its tributaries for lands lying above the Lahontan Reservoir. According to the Decree, the provisions for water duties are 4.5 acre-feet per acre diverted to the canal for the bottom lands, 6.0 acre-feet per acre diverted to the canal for the alluvial fan lands and 9.0 acre-feet per acre diverted to the canal for the bench lands. The water duties assigned for the various types of land are the total duties from whatever source of surface water. This is interpreted that the assigned duties for diversion from Carson River and its tributaries to canals could include drainage water, return flows, springs and releases from local reservoirs.

The primary difference between the provisions of the Interstate Compact and the Alpine Decree is in the amounts of water duty or maximum diversion allocation per acre of irrigable land. Based on the diversion limits provided under the Compact the diversions from the Carson River and its tributaries may reach up to 13.75 acre-feet per acre of irrigable lands. Whereas, the diversion allowances under the Alpine Decree are 4.5, 6.0 and 9.0 acre-feet per acre for irrigable areas classified as bottom, alluvial fan and bench lands, respectively.

In comparing the water duties under the Interstate Compact and the Alpine Decree, it is concluded that there could be substantial overdiversion under the provisions of the Compact. The amounts of overdiversion may range from 4.75 acre-feet per acre for bench lands and 7.75 acre-feet per acre for alluvial fan lands to 9.25 acre-feet per acre for the bottom lands.

Diversions from the East and West Forks of the Carson River and its tributaries in California are considered to be for bench lands. When adequate water supplies are available in these streams during the irrigation season, the amount of overdiversion under the Compact, as compared to the duties provided under the Alpine Decree, could reach up to approximatley 45,000 acre-feet in California. Diversions in Nevada are for a combination of soil types classified as bottom, alluvial fan and bench lands. Most of the irrigable areas are bottom and alluvial fan lands, in Nevada upstream of Lahontan Reservoir. Assuming that an adequate water supply would be available for diversion in Carson River and its tributaries during the irrigation season, the amount of overdiversion under the Compact may reach in the order of 200,000 to 300,000 acre-feet. However, the water supply for such amounts of overdiversion will not be usually available in the stream. Therefore, the actual amounts of overdiversions are considered to be significanly less than the above figures. These estimates were based on the differences between the potential maximum diversions under the Compact and claculated diversions based on water duties provided under the Alpine Decree.

A portion of the overdiverted water would return back to the Carson River by means of drainage and tail water recovery. However, overdiversions generally contribute to waste, depletion of supply, deterioration of water quality and possible delay in availability of supply to downstream users. Based on provisions of the Interstate Compact, as compared to the Alpine Decree, the supply of Carson River water reaching to the Newlands Project would be further depleted. A reduction in supply of Carson River water to the Newlands Project would generally require an increase in diversion of water from the Truckee River to the Newlands Project. Any increases in diversion from the Truckee River to the Newlands Projects reduces the supply of water to the lower Truckee River below Derby Dam and Pyramid Lake. It is important that the provisions of the Interstate Compact in the allocation of the water of the Carson River and its tributaries are in harmony with the Alpine Decree so that potential adversities to supply of water in the lower Truckee River and Pyramid Lake are minimized.

There are other discrepancies between the Compact and the Alpine Decree, but they are not considered to be relatively significant to the lower Truckee River and Pyramid Lake. However, a source of discrepancy exists that may be of an interest to water users on the West Fork of the Carson River. It relates to the timing of rotation between California and Nevada in diverting the natural flow of West Fork Carson River. According to the Compact, after the first Monday in May until October 31, whenever the flow of West Fork at the western boundary of Section 34 (Township 11 North, Range 19 East, MDBM) falls below 175 cfs, the diversion of water from the West Fork downstream of the western boundary would be subject to weekly rotation by California and Nevada. The flow near the western boundary is measured by the U.S. Geological Survey. The gauging station for flow measurment is located at Woodfords in California. The water users in California diverting from the West Fork Carson River downstream of the western boundary would rotate all or any portion of the natural flow of West Fork Carson River necessary to satisfy the demand of Nevada lands with water users in Nevada every-other week. Stockwater, domestic water and water for fire protection purposes would be excepted from the rotation.

Whereas, under the provisions of Alpine Decree the rotation starts on the first Monday in June instead of the first Monday in May and the rotation is not triggered by the flow condition in the West Fork Carson River as measured by the gauge at Woodfords.

Please call if there are any questions or additional information is needed.

Sincerely,

Ali Shahroody

AS:teh

cc: Robert S. pelcyger, Esq.
Michael Thorp, Esq.

Mr. Taylor. Ms. Zell.

Ms. Zell. Mr. Thorp and Mr. Shaw, what is the status of the tribe's claim of an implied reserve water right to the unappropriated waters of the Truckee River for fishery purposes given the recent decision of the district court in the *United States* v. *Truckee-Carson Irrigation District*? And how would that claim be effected under the proposed settlement?

Mr. Thorp. The status of the claims—and I say claims—is this: first, the tribe has a suit in California for the unappropriated water in California. The judge there has ruled that the tribe may proceed with that claim. We also, after the remand of *Nevada* v. *The United States*, which is the case in Nevada, the tribe moved to amend its complaint to assert a claim for the unappropriated water in Nevada. The district judge there, in the past few days, has ruled that an amendment of the complaint would not be allowed, and has dismissed the tribe's complaint.

Now, our reading—and we have recently filed a motion to clarify this—but our reading of his decision is not that we cannot make the claim, but rather we cannot make the claim in that lawsuit, principally because there are only six or eight affected parties and there are 17,000 in the lawsuit, and he didn't feel that it was proper to keep them in the litigation when it is really a relatively narrow litigation at this point.

So, our position will be that even with the judge's decision, there is nothing to preclude us from filing a new lawsuit against the State and those holding—or have outstanding applications for permits, existing permits being protected. So, we feel that we can still make the claim for the unappropriated water in Nevada, but we will have to do it in a new lawsuit most likely.

Ms. Zell. And how would the proposed settlement effect that claim?

Mr. Thorp. We would give up both of those claims in exchange for a permit from the State of Nevada for the unappropriated water.

Ms. Zell. If the title I settlement is not achieved, what is the prognosis for the survival of the cui-ui fish other than a hatchery fish?

Mr. Thorp. Well, that is a good question. It will depend upon how successful we are in litigation in the future. Using Stampede Reservoir is a good start. We recently have entered a consent decree which restricts diversions around Reno for agricultural purposes to the exact amount of the decrees. So, we feel there is going to be some water conservation there.

The only other way we are ever going to be able to get more water to Pyramid Lake is if we can restrict the amount of water going to the Newlands project. And that will mean extensive litigation over the operating criteria. And it is anybody's guess how successful that will be. But I suspect that it will involve a number of lawsuits and many years of litigation. So, I really can't say, and that is why we are interested in settlement because we don't know how successful we will be against the Truckee-Carson Irrigation District.

Ms. Zell. You mentioned that the State of Nevada's claim to the bed and banks of the Pyramid Lake and to that portion of the

Truckee River that lies within the exterior boundaries of the reservation is an ongoing source of concern and possible negotiation.

We heard Governor Bryan state that the issue is moot, and Mr. Westergard state that the State was not in the position to relinquish its claim.

What reasons has the State of Nevada cited for its refusal to relinquish that claim?

Mr. THORP. What reasons has Nevada has given us?

Ms. ZELL. Yes.

Mr. THORP. Well, as you probably know from the Sage Brush Rebellion and other movements that the State has been very active in, they feel very strongly about State sovereignty out there. And I think they flatly take the position that when they came into the Union, they got the bed and banks of all navigable bodies of water, period. And other than that, I don't know. But the big issue, of course, has always been jurisdiction over non-Indian fishing around Pyramid Lake. They seem to take the position that if they owned the bed, they would have jurisdiction. We don't think that necessarily follows, but we don't have an agreement on that.

Ms. ZELL. What is the tribe's position to the Interior Department's proposed amendment to section 110, with regard to damages, and the proposal that damages be taken from the tribal trust fund that is authorized under section 109?

Mr. THORP. Well, to be very frank with you, I didn't understand that when I read it. And I think that the Interior Department may not have written down what they intended to write down. Now, if their position is that damages come out of the tribal trust fund, then of course that would be totally unacceptable and it wouldn't make any sense.

It looked to me like what they were trying to achieve was that the way the bill is drafted, damages go directly to the tribe. In other words, a check would be sent to Mr. Shaw. It seems like what they were trying to achieve was that damages would be placed into the tribal trust fund and then be subject to the—the tribe would say well, we want to spend it on this project, and they are still subject to secretarial review to see if it meets the requirements of the trust fund, that it is an economic development project and that type of thing. I think that is what they really meant. I hope that they didn't mean that it would come out of the tribal trust fund, because that would be insane.

Ms. ZELL. The following questions have been submitted by Senator Hecht's office. The tribe's testimony doubles the amount of money the Federal Government is to contribute, from the level agreed upon during the August 20, 1985, negotiations and contemplated for many months prior to that time.

I believe you have said, but would you state again for the record, why the tribe has changed its position about the necessary level of funds?

Mr. THORP. Yes; briefly, at the beginning we told the Government we did not think that was enough money, but that we were willing to live with a cap like that if they were sure that they could not get anything else, and as long as we were in total agreement with the bill. Since we don't have a total agreement, we didn't think we were bound by that, and we felt it was our duty to really inform the committee that that money just wouldn't do it.

Ms. **Zell**. Is the tribe willing to agree to the Endangered Species Act and National Environmental Policy Act exemptions in this bill, and if so, why?

Mr. **Thorp**. Well, that is kind of a difficult one to answer. That section, which is section 112, was not our section. But we feel that as written the section is satisfactory, because first of all, we really don't think that at this point we need the procedural protections of either NEPA or the Endangered Species Act because from our standpoint, the entire thrust of this litigation is to carry out those two acts. So, we don't need to do any—or a section 7 biological opinion because, for example, the Fish and Wildlife Service will be actively involved in any agreements which are reached under the bill.

Second, since it is the tribe's position that the aim of the bill is to conserve the species, to bring them to a point in which they no longer need the protection of the Endangered Species Act, that the substantive requirement of the Endangered Species Act will be, in fact, carried out by this bill.

Ms. **Zell**. Let me ask the same question that was addressed to Assistant Secretary Broadbent this morning. And that is, why has there not been an attempt to include the water quality issues that are outstanding in this settlement?

Mr. **Thorp**. Well, first of all, the tribe has no objection to negotiations over the water quality lawsuits. In fact, Mr. Shaw and I met with the attorneys for the cities, I guess it was about 3 weeks ago, to try to get some negotiations going. And I think it is fair to say that negotiations are underway.

The reason that it was not included in this is that that whole subject is extremely complicated, very complex, and I think may very well require an additional expenditure of funds from somebody to correct it. And we didn't think that this bill was the proper vehicle for that. That is the first point.

The second point is that we think it is going to probably take a lengthy period of time before we can come to any sort of resolution. We are not even at the point that we are really able to give each other offers and counteroffers. We are still trying to decide what is it that can realistically be done to solve the tribe's problems with the sewage treatment plant. So, the timing was a problem.

And third, we really felt that if we threw that subject into this bill, it would probably make a nightmare out of how you would handle it in Congress.

Ms. **Zell**. On what grounds does the tribe base its claim to the bed and banks of the Pyramid Lake?

Mr. **Thorp**. On the grounds that the reservation was created prior to statehood of the State of Nevada, and when the reservation was created, it was created with an intent that the bed and banks be included in the reservation.

Ms. **Zell**. Thank you.

Mr. **Taylor**. I would like to point out that it is 3 p.m. We have this room until 4 p.m. at least, and then they may run us out. I am going to have to ask witnesses to summarize; we will have to start trying to keep our questions down.

Thank you very much, Mr. Shaw and Mr. Thorp, and we will probably have some followup questions. Our next panel of witnesses is Mr. Jim King, chairman of Washoe County Commission; accompanied by John MacIntyre. And I think we could have Mr. Howard, the councilman from the city of Reno come forward also, as well as Cecilia Colling, the councilwoman for the city of Sparks.

Mr. KING. Thank you, Mr. Chairman.

STATEMENT OF JIM KING, CHAIRMAN, WASHOE COUNTY COMMISSION, RENO, NV, ACCOMPANIED BY JOHN MacINTYRE, MANAGER, WASHOE COUNTY COMMISSION

Mr. KING. My name is Jim King, and I represent the Washoe County Board of Commissioners, Reno, NV. I am chairman of that commission. My statement will be very brief, as I think the statements of my associates from Sparks and Reno will be as well. But I do have a brief statement to read into the record, and I appreciate the opportunity to do so.

Mr. TAYLOR. Please proceed.

Mr. KING. I am gratified to be able to report to this body the unanimous support of the Washoe County Commission for enactment of the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

Decades have passed since the first lawsuit was instituted, and more years have gone by in which the various users of the waters available from the Lake Tahoe watershed have spent fortunes in money and lifetimes in effort and energy attempting to resolve the myriad of claims and counterclaims over this water.

I am pleased to note our two Nevada Senators have proposed a solution which will recognize the rights and claims of all concerned, and will enable all concerned to protect what is, and to plan for what is to come. All will benefit in the area enriched and sustained by this water.

Washoe County includes the cities of Reno and Sparks, both of which are experiencing a steady growth in both population and in business and industry diversity. Not only are our tourism and allied elements in a growth cycle, but our industrial diversification is also proceeding apace.

The two cities and small portions of the unincorporated area of Washoe County are currently served by the major water purveyor, Sierra Pacific Power Co. Washoe County, as a purveyor of water, currently serves much of the unincorporated area. While the county now uses ground water to provide service, we will soon be using surface water from the Truckee River.

The Stampede Reservoir storage, which will be made available by this bill, will support those surface water rights. Our planning department projects that we will need 7 percent of the Stampede Reservoir storage to meet the needs of our 1987 population. In 10 years, by 1996, we, as a water purveyor, will need 25 percent of that storage to be made available for M&I uses. We anticipate that the remainder will be needed by the cities of Reno and Sparks and others along the Truckee River.

Washoe County, together with the other entities represented here today, therefore have a vital interest in supporting the proposed act. Washoe County recognizes the rights and needs of the Paiute Indian Tribe, and we recognize the rights and needs of the homeowners, the ranchers, and the farmers of the Fernley, Fallon, and Walker River areas.

Above all, we recognize, as did our Senators and Representatives, that only through the passage of this legislation and the needs and the rights of the many and of the few be resolved in a fair and equitable manner in perpetuity.

On behalf of the Washoe County Commission of Reno, NV, I respectfully urge that this committee recommends swift approval of the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

Thank you.

Mr. **Taylor**. Thank you. Mr. Howard.

Ms. **Colling**. I believe I will begin.

STATEMENT OF CECILIA COLLING, COUNCILWOMAN, CITY OF SPARKS, NV

Ms. **Colling**. Good afternoon, Mr. Chairman, distinguished committee members and guests. I am Cecilia Colling, councilmember of Sparks, NV, and president of the Washoe County Regional Planning and Advisory Board revolving around the issue of water.

I appreciate the opportunity to appear here today as the representative of my constituency, to lend our support for S. 1558. In order to conserve your valuable time and to avoid duplicity in the record, I am offering a joint statement with my colleague, Dave Howard, councilman of our sister city of Reno, NV.

Our statement is as brief and concise as possible to inform you of and place in the record the major concerns of our two cities. If you or your staff require additional or more detailed data concerning our statement, we will supply it as soon as practical after our presentation.

Mr. Howard will now read our joint statement, and at the conclusion we will remain available to answer any questions on subjects within our personal knowledge, or will obtain the answers from our staff and forward them to you.

Thank you.

STATEMENT OF DAVE HOWARD, COUNCILMAN, CITY OF RENO, NV

Mr. **Howard**. Thank you, Cecilia. Our two cities are located in Washoe County, NV. Reno and Sparks have several miles of common boundaries, and with parts of Washoe County occupy an area along the Truckee River which is commonly referred to as the Truckee Meadows.

The cities share the Truckee River for our citizen's water supply and recreational opportunities. The cities also discharge the output of our jointly owned water waste treatment plant into a tributary of the river.

The cities have participated in several lawsuits involving the flow of the Truckee River, and a number involving its water quality. The cities have also engaged in negotiations with all of the parties mentioned in S. 1558 to settle both the water quality and water quantity issues involving the Truckee River.

Our specific interests in S. 1558 are as follows. Within the political boundaries of Reno and Sparks is the largest population center along the entire course of the Truckee River. Our combined population of 200,000 represents over 98 percent of all the residents along the river. The municipal and industrial water supply for the great majority of these residents comes primarily from the Truckee River, its tributaries, and deep wells in close proximity to the river.

It is critical that the issues involving the flow of the Truckee River be permanently settled to allow proper planning for the present and future water needs of these residents.

The second issue involves the joint wastewater treatment plant owned by the cities of Reno and Sparks. Section 107(a)(b) of the bill provides that all parties in Nevada having a direct interest in the storage and flows of water in the Truckee River must agree on a water management plan within 1 year of the bill's effective date.

The cities of Reno and Sparks, as owners and operators of the largest wastewater treatment facility on the river, while not named as a party in section 107(a)(b), intend to actively participate in these proceedings, and have done so.

In relation to our participation in the water management process under the bill, we will continue our recently commenced negotiations with the Pyramid Lake Tribe to resolve the water quality issues related to our joint wastewater treatment plant. These issues involve the completion by July 1, 1988, of our new 40-million-gallon-per-day tertiary treatment facility, which is scheduled to be operated under some of the most strict water quality standards in the United States. The quality of the effluent to be discharged from this plant will substantially improve the water quality in the Truckee River.

If agreement on these important water quality issues are not reached, and the cities are prohibited from discharging the effluent into the river, Truckee River could be deprived of up to 45,000 acre-feet per year of a water resource, which constitutes almost 10 percent of the river's average annual flow. This loss would adversely affect the lake level guarantee contained in section 104 of this bill. Consequently, this would materially increase the damages payable from the U.S. Treasury to the Pyramid Lake Tribe under section 110 of the bill.

In conclusion, we solicit your support of S. 1558 and trust that our statement has fully advised you of the reasons for our current support of the bill, with full disclosure of our position on the issues still to be resolved within the 1-year timeframe of section 107(a)(b).

Again, we wish to thank you for this opportunity to appear here today, and we stand ready to answer those questions which are within our ability to do so.

Mr. Taylor. Thank you for your joint statement.

I would just have one observation which may conclude in a question, I am not sure. I read your statement last night. As I understand it, tertiary water treatment is about as good as you can get. In fact, I think you can drink it when you are done with it.

As you point out, the discharge there amounts to 10 percent of the flow of the Truckee River. I also notice that you have only recently started some negotiations with the tribe on the water quality aspect. I assume it is a little too soon to ask you how those negotiations are going, but I am sure you will be getting into it as this matter moves forward.

Given tertiary water treatment, I am not quite sure what sort of issues there are to be presented. I certainly wish all of you luck on that negotiation, even though it is not addressed in this bill.

Mr. HOWARD. Frankly, we see this bill as a beginning to bring about those negotiations that are necessary.

Mr. TAYLOR. I don't have any further questions. I understand Sierra Pacific also has spoken for the interest of Reno and Sparks and Washoe County, and I think our record is developing quite well. Thank you all very much.

Mr. HOWARD. Thank you.

Mr. TAYLOR. Our next witness is Mr. Jim King, chairman of the Washoe—pardon me, I'm repeating myself here. Mr. Alvin James, Ad Hoc Committee To Preserve Indian Water Rights, Pyramid Lake Paiute Tribe.

Mr. James.

STATEMENT OF ALVIN JAMES, AD HOC COMMITTEE TO PRESERVE INDIAN WATER RIGHTS, PYRAMID LAKE PAIUTE TRIBE

Mr. JAMES. Mr. Taylor and members of the committee, and committee staff, I am pleased to offer testimony before you on S. 1558. I am Alvin James, member of the Pyramid Lake Paiute Tribe, and member of the Ad Hoc Committee To Preserve Indian Water Rights. My testimony is against passage of this bill.

Along with my own written testimony, which I now give, I would like to submit as part of my own testimony, comments on this bill by the Bureau of Indian Affairs, Phoenix Area Director to the Bureau's Congressional and Legislative Affairs Staff dated August 29, 1985, and also comments on the California-Nevada Interstate Compact by the same agency to its regional solicitor dated November 7, 1984.

Mr. TAYLOR. Your prepared statement as well as the attachments to it will be made a part of the record.

Mr. JAMES. Thank you. I do this because the Indian Bureau has never been involved in negotiations contained in title I of this bill. I also do this because Robert Broadbent of reclamation has decided to speak for Interior and its responsibility as trustee for my tribe as well as Nevada and California Indian tribes.

I plead to the Congress to give the Pyramid Lake people time to learn of this bill's contents so that we may arrive at an intelligent decision on the bill. As it now stands, we, the Ad Hoc Committee to Preserve Indian Water Rights, have a legal petition that demands the tribal council to not support this bill, and also demands the tribal council to hold a referendum vote on the issue after full explanation of the bill in all of our reservation communities.

So, you can see, only I have the legal voice of the Pyramid Lake people as represented in our petition to oppose the entire bill. This is because the tribal council, under advice of its tribal attorney, Mike Thorp, has failed to carryout the demands of the Pyramid

Lake people according to our constitution and bylaws—contrary to what was said earlier.

The big money interests think they need this bill to provide more water for the Truckee Meadows area. They refuse to live within what water they now have for Reno, Sparks, and Washoe County. They do not want to live with the fact that they lost in the Supreme Court a case asserting the fact that Stampede Reservoir water is to be used for the Pyramid Lake fishery and flood control, with smaller amounts for other purposes. Notably, none of the water is to be used for municipal and industrial purposes.

Nothing in the bill assures the continued fishery water once Pyramid Lake's fish are taken off the endangered species list. No water goes to Pyramid Lake for fishery purposes once Stampede drops to about one-half full. In most years Stampede is not one-half full since the reservoir must carry out its flood control purposes. Today, Stampede is approximately right at one-half full, even though this is generally considered a good water year. So, under the bill, Pyramid this year would get no water from Stampede if we are to assume the bill has been in effect for years beyond its initial stages.

Operation and maintenance funds are currently available under provisions of the Washoe project act for Pyramid Lake fishery purposes.

The tribe has had to litigate to successfully require that the Secretary of the Interior oversee TCID and/or Reclamation, that they operate Derby Dam on the Truckee River in a responsible manner according to an OCAP.

Giving complete control to TCID over Derby Dam is like letting the coyote guard the chicken coop. TCID testified in court and on appeals on the issue of its intention to ignore the Secretary's OCAP. From 1973 to 1983, the Bureau of Reclamation has dragged its feet to live up to the law of the land. It is not fair to the Pyramid Lake Tribe to legitimize TCID's unlawful acts in this regard, nor is it fair to accept Interior's failure to carry out its trust responsibility to the tribe.

The tribal attorney contends the tribe needs money to defend itself in lawsuits. Most people know Indian tribes are immune from lawsuit and that the Interior must defend as trustee to the best of its ability. Money seems to dictate the action of the attorneys for the tribal council. The lawyers receive money to draft up this bill, and they will continue, for at least 1 year, to receive money to negotiate, all at the expense of us taxpayers.

The Washoe Project Act, and the intent of Congress, was for water in Stampede Reservoir to be used for the Pyramid Lake fishery. In the act, no mention is made of threatened or endangered species of fish in Pyramid Lake. This bill, however, makes great mention of how water from Stampede will be used for threatened or endangered species, and implies that the time will come when water will no longer be needed for Pyramid fishery once the fish are no longer on the Secretary's designated threatened or endangered list.

The two swamps mentioned in the act, namely Stillwater Wildlife Management Area and Carson Pasture, will receive in the bill rehabilitation and betterment and water. None of these swamps have water rights. Our tribal attorneys contend legislation is needed to agree. The Pyramid Lake people feel no legislation is needed to agree to try to agree.

No mention is made in the bill of some 2,000-plus acres of benchland known as Dodge Flats on the reservation, which has *Orr Ditch* decreed water rights. Many of the cattlemen and ranchers at Pyramid Lake would like to see Dodge Flats developed as it was initially planned when the tribe received water rights for Dodge Flats with a priority right of 1859.

TCID is allowed under the bill to improve its T canals and develop areas without water rights, namely the two swamps mentioned above. We believe funds should be made available for development of Dodge Flats, not under any revision of this bill since we oppose the entire bill, but rather as a commitment to the Pyramid Lake people from the U.S. Congress.

We believe the 26-foot drop in elevation allowed for Pyramid Lake by 1988, which is 3 years from now, is excessive and will lead to increased salinity beyond tolerable limits for fish and other animals. Although the lake was at this low elevation for a brief period of time during the 1960's, no one could say with certainty that the continued lack of fresh water at the low elevation would not be damaging to the ecology of the lake.

Title II of the bill has consistently been opposed by four Presidential administrations for many obvious reasons, if one reads the many reasons outlined by the above referenced BIA comments. Primary is our concern of the Federal Government's interest in carrying out its trust responsibility to Indian tribes under Federal water law, which under the bill would be abandoned in favor of State law.

Other tribes in Nevada, Walker and Fallon, for example, and possibly many more in California, are basing their claims for water rights under Federal law for their newly acquired lands. There is no assurance that Indian requests for State water—to the State water engineers for permits will be honored for even water wells on our own reservations, since States have a historical track record of discrimination against the property rights of American Indian tribes.

That concludes my testimony.

Mr. TAYLOR. Thank you very much, Mr. James.

[Mr. James' prepared statement follows. Testimony resumes on p. 351.]

PREPARED STATEMENT OF ALVIN JAMES, AD HOC COMMITTEE TO PRESERVE INDIAN WATER RIGHTS, PYRAMID LAKE PAIUTE TRIBE

Mr. Chairman and Members of the Committee. I am pleased to offer testimony before you on S. 1558 & HR. 3213. I am Alvin James, a member of the Pyramid Lake Paiute Tribe and a member of the Ad Hoc Committee to Preserve Indian Water Rights. My testimony is against passage of this bill.

Along with my own written testimony which I now give, I would like to submit as part of my own testimony comments on this bill by the Bureau of Indian Affairs (BIA), Phoenix Area Director to the Bureau's Congressional & Legislative Affairs Staff, mc 120, dated August 29, 1985; and also comments on the California-Nevada Interstate Compact by the same agency to its Regional Solicitor, dated November 7, 1984. I do this because the Indian Bureau has never been involved in negotiations contained in Title I of this bill. I also do this because Robert Broadbent of Reclammation as decided to speak for Interior and its responsibility as trustee for my Tribe as well other Nevada and California Indian Tribes.

I plead to the Congress to give the Pyramid Lake people time to learn of this bill's contents so that we may arrive at an intelligent decision on the bill. As it now stands, we the Ad Hoc Committee to Preserve Indian Water Rights, have a legal petition that demands the Tribal Council do not support this bill and also demands the Tribal Council hold a referendum vote on the issue after full explanation of the bill in all of our reservation communities. So, you can see, only I have the legal voice of the Pyramid Lake people as represented in our petition to oppose this entire bill. This is because the Tribal Council

., under advice of its Tribal Attorney Mike Thorpe, has refused to carry out the demands of the Pyramid Lake people according to our Tribal Constitution & Bylaws.

The big money interests think they need this bill to provide more water for the Truckee Meadows area. They refuse to live within what water they now have for Reno, Sparks, and Washoe County. They do not want to live with the fact they lost in the Supreme Court a case asserting the fact that Stampede Reservoir water is to be used for the Pyramid Lake fishery and flood control, with smaller amounts for other purposes. Noteably, none of the water is to be used for municipal and industrial purposes.

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The tribal attorney contends the Tribe needs money to defend itself in lawsuits. Most people know Indian tribes are immune from suit and that the Interior must defend its trustee to the best of its ability. Money seems to dictate the actions of the attorneys for the Tribal Council. The lawyers receive money to draft up this bill, and they will continue, for at least a year, to receive money to "negotiate" - all at the expense of us taxpayers.

The Washoe Project Act, and the intent of Congress, was for water in Stampede Reservoir to be used for the Pyramid Lake fishery. No mention is made of threatened or endangered species of fish in Pyramid Lake. This bill, however, makes great mention of how water from Stampede will be used for threatened or endangered species and implies that the time will come when water will no longer be needed for Pyramid fishery once the fish are no longer on the Secretary designated threatened or endangered list.

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Fallon for example, (and possibly many more in California) are basing their claims for water rights under federal law for their newly acquired lands. There is no assurance that Indian requests to State Water Engineers will be honored for even water wells on their own reservations, since states have a historical track record of discrimination against the property rights of Indian tribes.

UNITED STATES GOVERNMENT

memorandum

DATE: August 29, 1985

Acting

REPLY TO ATTN OF: Phoenix Area Director

SUBJECT: Comments on S. 1558, a Bill "To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes."

TO: Congressional and Legislative Affairs Staff, mc120

On August 1, 1985, S. 1558, a bill "To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes" was introduced in the Senate. Concurrently, companion bill H.R. 3213, was introduced in the House of Representatives. You have asked our comments on S. 1558 and how it affects Nevada Indian Tribes. Our comments follow:

The Pyramid Lake Paiute Tribe negotiated Title I of this bill without Bureau of Indian Affairs involvement. It is recognized that a large measure of self-determination is current federal Indian policy. We do not wish to sound critical, however, we feel that there are many items in the bill that are detrimental to Pyramid Lake. We are aware that any negotiated settlement should be looked at as a total package and not with focus on specific parts. With that in mind we have few comments to make on Title I. We would point out that settlement proposals of Title I are inconsistent with some language of Title II. When the two titles are combined, as S. 1558 has done, we believe that the bill negatively impacts the western Nevada Indian community and the Secretary of Interior.

The bill purports to protect and provide such measures that the Lahontan cutthroat trout and cui-ui will eventually be delisted from the threatened and endangered species listing. Careful reading of the bill results in our conclusion that the survival of the two species is not assured by this legislation. Additionally, instream flows critical for spawning and nursery habitat, are not addressed. Eutrophication of Pyramid Lake is a current concern because of Reno-Sparks sewage control problems and yet water quality is not addressed in the bill. While large amounts of money are itemized in the bill to be appropriated and placed in specific treasury accounts for use by the Pyramid Lake Paiute Tribe, there are insidious references to the Secretary of Interior being liable for several millions of dollars per year in damages if certain listed items are not accomplished. Those damage dollars we presume would come from BIA annual appropriations.

Water rich in dissolved nutrient (such as phosphates) but often shallow & seasonally deficient in oxygen.

Title I

Page 5, Line 10. "By Period" is a typographical error; it should read "Dry Period"

Page 7, Line 9-12. Wording can be interpreted more than one way. Possible satisfactory language is: "In any two year period the level of the Pyramid Lake water surface shall not drop below elevation 3,786 feet above mean sea level measured at the end of each water year beginning September 30, 1989 and calculated by a two point moving arithmetic mean."

Page 9, Line 9 and Page [illegible], Line 5. "Dry period municipal and industrial supply" we assume to be a Bureau of Reclamation term of art. It should be defined or at least attributed to Reclamation.

Page 10, Line 18-24. By this language the Secretary of Interior alone shall determine when water is not required for the Pyramid Lake fish resources. There is no objective criteria stated or inferred to define when the fish resource requires water.

Page 19, Line 4. As drafted the Secretary of Interior shall pay damages of up to $16,000,000 out of appropriated funds if certain conditions are not met. We assume this money would come from BIA appropriations.

Page 21, Line 2-8. The Secretary of Interior shall pay damages of up to $7,000,000 per year if the water level of Pyramid Lake drops below certain elevations for specified periods of time. We assume such damage dollars would come from BIA appropriations.

Page 21, Line 21 through Page 22, Line 6. (1) With all repayment obligations removed from the Newlands Project as this section provides and the congressional charter granted to TCID to run the Project provided in Sec. 111(b)(1), we have concerns that the Secretary will not have authority to promulgate or enforce operating criteria. It has been operating criteria that the Secretary has enforced since 1967 that is in large measure responsible for the water surface rise at Pyramid Lake. (2) In this time of austere federal budgets the cost to the federal treasury of forgiving the Newlands Project repayment obligation should be listed.

Page 22, Line 7-11. The Truckee-Carson Irrigation District by this provision is granted authority to manage the Newlands Project facilities. The Secretary of Interior has had to take the operation of government facilities away from TCID in the past because of operational irregularities and yet this provision provides a congressional charter to the same organization. The Fallon Indian Reservation is part of the Newlands Project but not part of the Truckee-Carson Irrigation District. Language should be modified to acknowledge the Fallon Indian Reservation and provide a mechanism to guarantee water delivery to reservation lands.

Page 23, Line 11. The Endangered Species Act should be cited as 16 USC 1531; not 165 USC 1531.

Title II

We have grave concerns about the effect of the California-Nevada Interstate Compact. These concerns have been voiced ever since the mid 1960's. Our November 1984 memorandum to the Regional Solicitor is an example of specific concerns and is attached. These concerns fall in four areas:

(1) General. Water quality is not addressed and yet there are water quality problems in all four basins.

The Endangered Species Act is ignored.

The compact is not in harmony with the Orr Ditch and Alpine court decrees.

(2) Secretary of Interior. Federal sovereignty is compromised. In addition, the compact gives up a large measure of Federal reservoir control and yet Title I of this bill burdens the Secretary with payment of damages if certain water surface elevations of Pyramid Lake are not maintained. Control of these reservoirs could have insured compliance.

(3) Pyramid Lake Reservation. Several compact provisions directly and negatively impact on the Pyramid Lake Reservation. We assume that the Pyramid Lake Tribe has considered these provisions in their negotiations of Title I.

(4) Walker River Reservation. The compact hurts Walker River Reservation and yet the Walker River Tribe has had no input nor does it derive any benefit from any Title of the bill as drafted.

We appreciate the opportunity to comment on a bill that directly impacts Tribes for which we have responsibilities.

Curtis Geiogamah

Attachment

UNITED STATES GOVERNMENT
# memorandum

DATE: November 7, 1984

REPLY TO ATTN OF: Phoenix Area Director

SUBJECT: California-Nevada Interstate Compact, our Meeting of June 14, 1984

TO: Regional Solicitor

Copy

At our Phoenix meeting on Thursday, June 14, 1984, you indicated that the files you inherited regarding the California-Nevada Interstate Compact were travel worn and incomplete. You requested that this office provide a listing of concerns relative to the proposed compact.

For approximately twenty years, representatives from the states of California and Nevada negotiated the language of an interstate water compact with token United States representation and no Indian input. After the draft compact passed the Nevada Assembly and Senate and was introduced in the California legislature, many federal agencies -- the Solicitor's Office and Bureau of Indian Affairs included -- devoted considerable time and expense in developing a federal position on the proposed compact. The official federal (including the Department of Interior) position taken as the result of that effort was one of rejection; that the compact was unacceptable in its present form. Neither the overall federal position nor that of the Department of Interior has ever been rescinded -- over a fifteen year period with four changes in administration and seven different men serving as Secretary of Interior.

The constancy of that position is extremely important since many major events have occurred in the intervening years that impact on Lake Tahoe and the Truckee, Carson and Walker River basins. For example:
- •Endangered Species Act enacted by Congress 12/28/73, P.L. 93-205.
- •Supreme Court decision in Nevada v. United States.
- •Final Decree in United States v. Alpine Land and Reservoir Company.
- •Ninth Circuit Court of Appeals decision in Carson-Truckee Water Conservancy District v. Secretary of Interior.
- •Unprecedented population growth in the Lake Tahoe and Reno-Sparks areas.

Through the years this office has consistently raised concerns about the compact in its present form and how it would adversely affect Indian people. Events that have transpired in the recent past such as those enumerated above have not allayed our concerns; in fact, we are now more concerned than ever.

Some of the major problems we have with the presently drafted compact are:
- o The compact allocates water amounts in both California and Nevada that are not consistent with the final decree in United States v. Alpine Land and Reservoir Company.
- o The compact is extremely detrimental to Pyramid Lake.
- o Area fishery problems are not addressed in the compact.

- There is no consideration given in the compact to water quality and yet water quality problems exist in each of the three river basins.
- The compact ignores the paramount United States interests in the region.
- The compact does not take into account the Congressional charge regarding treatment of endangered species.

We are aware of the recent negotiation position of the State of Nevada that compact approval in its present form is a necessary prerequisite to a negotiated settlement of the Pyramid Lake issues. In light of the concerns we have enumerated above and those we have attached, we see no way that United States officials can acquiesce to such a demand and still fulfill congressionally mandated federal functions.

Copy

JAMES H. STEVENS

Attachment

BIA COMMENTS
California-Nevada Compact
November 1984

1. We concur with the statement made by Secretary of Interior Stewart L. Udall in a January 14, 1969 letter to Charles J. Zwick, Director, Bureau of the Budget: "The compact goes beyond the usual function of allocating water between party states and purports to bind the federal government both as a sovereign and as trustee for Indians." And yet there was only token United States representation in the compact negotiation process (a neutral U.S. representative) and no Indian involvement. At the end of the compact negotiations a provision was added to the compact to bind the United States. Our position, because of the Indian people we represent, is that substantial changes in the compact must be made before it is accepted.

2. ART.II.E. The Carson sink area should be included within the definition of the Carson River basin. If the sink is not defined as part of the basin then the downstream limit of the Carson River basin should be precisely defined.

3. ART.II.F. The Walker River basin should include the whole Walker Lake and not just the portion on the Walker River Indian Reservation.

4. ART.II. Definition should be provided for "beneficial use".

5. ART.IV. The prohibition on domicle and residence for the federal representation appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would

be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured. Additionaly, by reason of the substantial federal interest in the region and the fact that the United States would be bound by key provisions of the compact, the federal representative should be a voting member of the Commission.

6. ART. IV.D.5. We do not believe that the Compact Commission should have unilateral power to dictate measuring devices over all lands within the appropriate water basins. Acceptable language would be the inclusion of a sentence following the phrase..."as the Commission may determine necessary or proper to carry out the purposes and provisions of the compact. Such determination may be made only after appropriate hearings or consultation with the water users and with respect to waters on Federal lands, shall take into consideration the program and plans of the Agency administering such lands.

7. ART.IV.D.11. As written, the Compact Commission has broader subpoena power than U.S. District Court judges. We find that objectionable.

8. ART.IV.E. As written, the Compact Commission could conceivably reallocate water irregardless of judicial decree. This is unacceptable.

9. ART.V. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of United States v. Truckee Carson General Electric Company, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

10. ART.V.E. The pumping from Lake Tahoe provision works against Pyramid Lake and judicious use of Stampede reservoir.

11. ART.V.F. This section gives the Compact Commission extremely broad powers that seem to supersede the "Orr Ditch" and "1915" decrees.

12. ART.VI. The Pyramid Lake Paiute Tribe is precluded by Nevada v. United States from asserting claims against appropriated water right holders. The tribe needs the unappropriated Truckee River water in California and Nevada. Presently the compact does not allow the tribe to do this.

13. ART.VI. At best the compact does not address the issue of reservoir operation.

14. ART.VI.1,3 & 4. Water is allocated for undefined purposes in California. Judge Ramirez has rules from the bench in Pyramid Lake Paiute Tribe v. State of California that Tribe's claim to unappropriated water is unaffected by Nevada v. United States.

15. ART.VI.B.3. Six thousand acre feet of water are granted to California from Stampede reservoir. The allocation ignores the Ninth Circuit Court Decision in Carson - Truckee Water Conservancy District v. Secretary of Interior and the Endangered Species Act, 16 U.S.C. §1531.

16. ART.VI.B.4. Neither fishery flows nor lake stabilization are listed as beneficial uses of water.

17 ART.VI. Floriston rates are not mentioned in the compact and yet that is the logical place to address and correct their inconsistences and inefficiencies. Presently California is not bound by them and they are outdated. Floriston rate regime has a bearing on Pyramid Lake stabilization and spring spawning flows.

18. ART.VII. This article does not entirely agree with the final Alpine decree in regard to acreage, water rotation and irrigation season. Appropriate language perhaps could be inserted as follows: "The Compact

Commission shall recognize the pertinent provisions of the final *Alpine* decree as they pertain to allocations of water between California and Nevada."

19. ART.VIII. Water quality problems are not addressed and are of vital interests to the Walker River Tribe.

20. ART.VIII. The term "unused water" is used throughout the article. The term should be "unappropriated water".

21. ART.VIII.A.4(a). Weber Reservoir on the Walker River Indian Reservation was constructed fifty years ago. A right to store water in the structure has not been acceded to by the Nevada State Engineer. As now written this article would allow Hoye Canyon and Pickle Meadows reservoirs, proposed structures that have a Nevada water right priority in the 1930's to be constructed in the future and operated to the detriment of the Walker River Tribe.

22. ART.X. Interbasin transfers of water should further be limited by language of existing court decrees.

23. ART.XII. The Federal government owns and controls most of the storage and diversion facilities in the compact area. The Compact Commission should not control the operation of Federal reservoirs.

24. ART.XXI. This article purports to protect the right of the United States. Paragraph A through D, Article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in

the four basins which are the subject matter of the compact. However, Article XXII, Ratification and Consent, an exception for which is contained in Article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-reference to other sections in the compact, the United States would be bound to still other provisions. Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality.

25. ART.XXI. Somewhere in the compact should be these additional paragraphs: ... except as provided in Article XXII nothing in this compact shall be construed as:

*Impairing or affecting the constitutional authority of the United States or any of its powers, rights, functions, or jurisdiction under existing or future legislation in and over the area of waters which are the subject of this compact.

*Affecting the rights or powers of the United States of America, its Agencies, instrumentalities, or wards to administer and control lands of

the United States or lands administered by it, or giving to the Commissioner to any person, organization, or governmental entity and rights or powers to use, occupy, administer, alter or control lands owned or administered by the United States, except with the consent of the Agency or instrumentality administering or having control of said land.
*Relinguishing the functions, powers, or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, or shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations.
*A waiver by the United States of its immunity from suit.

26. Somewhere in the compact should be an article that says in substance: "The United States is entitled to develop additional water yields independently or in cooperation with others. Any such water yields that result from participation by the United States may be used for its own purpose of in furtherance of the purpose of this compact without regard to any State allocations made by this compact."

27. Somewhere in the compact thorough consideration should be given to the quality of water allocated by the compact. The Walker River Indian Reservation presently suffers from high concentration of total dissolved solids in late summer; Lake Tahoe communities now export sewage into the Upper Carson River drainage; and Reno-Sparks sewage treatment problem are accelerating Pyramid Lake algal blooms.

28. With the threatened Lahontan cutthroat trout and the endangered Cui-ui found in the affected watersheds the compact cannot ignore the Endangered Species Act.

Mr. **Taylor**. I don't have any specific questions. I know that your tribe—a petition has been gathered. And under the constitution of the tribe a referendum is in order on this. I am sure that you'll be making strong presentations out at the council meetings.

And I would just comment on one element of your testimony. I was out at Pyramid Lake back in 1971. As I recall, at that time the elevation of the lake was 75 feet down from what it had been in 1905. I must have seen that at a pretty low period, apparently.

How much has it come back?

Mr. **James**. Apparently—generally I don't know exactly, but I think it is about 20 feet that it has raised since 1973, which was primarily the result of the Secretary's OCAP on the Newlands project.

Mr. **Taylor**. Well, it is a gorgeous lake, and I am very glad to know that it has had some come back. And I don't have any questions. I wish you and the tribe well in coming to some conclusions out there.

Mr. **James**. Yes; the other members of the committee will be testifying at the end of the hearing.

Mr. **Taylor**. I understand. Thank you very much. Next we'll hear from Mr. Leroy Arrascada, U.S. Board of Water Commissioners, and also legal counsel to the Walker River Irrigation District; accompanied by Mr. Girogi——

Mr. **Arrascada**. Mr. Giorgi won't be appearing.

Mr. **Taylor**. Oh, all right. Bolton Minister and Jim Weishaupt.

Mr. **Minister**. I think we can probably put Mr. Firth and Mr. Gray next——

Mr. **Taylor**. Sure. Bring them up, too. I would strongly urge all of you to summarize. Your statements will be made a part of the record as if spoken in full.

Mr. Arrascada.

STATEMENT OF LEROY ARRASCADA, U.S. BOARD OF WATER COMMISSIONERS, LEGAL COUNSEL, WALKER RIVER IRRIGATION DISTRICT

Mr. **Arrascada**. Thank you very much, Mr. Chairman. There is one thing, however, insofar as our statement is concerned. My written statement on page 10, the last paragraph, the first line starting with the word "without" should be the word "with." I know that there are other grammatical errors. One comedy on page 4 should be comity, which is rather important, I think.

Mr. **Taylor**. Did you leave a corrected version with us yesterday?

Mr. **Arrascada**. Yes, I did.

Mr. **Taylor**. OK. We'll be sure our printer gets that.

Mr. **Arrascada**. I think the city of Sparks I have heard referred to effluent as affluent and not effluent, and they may want to change their statements also.

Mr. **Taylor**. We had already decided to change that.

Mr. **Arrascada**. Thank you very much. I am Leroy Arrascada, and I am the attorney that represents the Walker River Irrigation District and also the U.S. Board of Water Commissioners. We have brought with us today Mr. Bolton Minister, who is a long time member of the compact commission of the State of Nevada. I think that his testimony is going to be extremely important to this committee in clarifying the compact, the term of the compact, and what it was to accomplish.

I think it's very, very easy to get lost in emotional issues that really had little to do with the compact and the main compact purpose. So, with that, I would turn it over to Mr. Minister to make the presentation.

Mr. TAYLOR. Mr. Minister.

[Mr. Arrascada's prepared statement, on behalf of the Walker River Irrigation District, follows. Testimony resumes on p. 383.]

TESTIMONY OF LEROY ARRASCADA
BEFORE THE SENATE SELECT COMMITTEE
OF INDIAN AFFAIRS ON S.1558

Mr. Chairman, my name is LEROY ARRASCADA, representing the Walker River Irrigation District, Yerington, Nevada.

The Walker River Irrigation District is a quasi political subdivision of the State of Nevada, organized and existing pursuant to Nevada Revised Statutes, Chapter 539, entitled "Irrigation Districts". The Irrigation District was formed in 1919. The Walker River Irrigation District has approximately 564 individual rancher located therein, and the boundaries of the District encompass 246,000 acres of ground.

TOPOGRAPHY OF THE RIVER

The Walker River is a non-navigable interstate stream. It consists of two main branches, the East and West Walker Rivers, which are fed by small streams rising on the Eastern slopes of the Sierra Nevada Mountains in Mono and Alpine Counties in the State of California. The West Walker, in the course of its descent, flows through Levitt and Pickle Meadows, two high mountain valleys, thence through a canyon with practically no cultivated area, thence Northerly and Northeasterly through Antelope Valley into the State of Nevada, thence through Smith Valley to the head of Mason Valley, where it joins with the East Walker River.

The principal streams forming the East Walker River combine in Bridgeport Meadows, which is a large area devoted to raising wild grass and pasture, at an elevation of 7,000 feet above sea level. The East Walker flows thence Northerly and Northeastwardly through canyons and sparsely populated valleys to Mason Valley where it unites with the West Walker River and forms the main Walker River.

The River flows Northerly and Northeastwardly and descends through the latter valley to the town of Wabuska, where it turns abruptly to the Southeast and flows through the Walker River Indian Reservation on to Walker Lake.

The mountains at the source of these streams are sparsely forested and afford little protection for the snows, resulting in rapid runoff of the water upon the advent of warm spring days. The distance from the source of the two main branches of the Walker River to the Walker River Paiute Tribe Indian Reservation are great, resulting in large losses of water through evaporation and seepage. From the source of the East Walker to its junction with the West Walker, the distance is approximately 70 miles. From the source of the West Walker to the junction is approximately 67 miles. The distance from the junction through Mason Valley and to the point of diversion on the Walker River Paiute Tribe Indian Reservation is a distance of 35 miles, and from the latter point to Walker Lake approximately 12 miles. U. S. vs. Walker River Irrigation District, C-125, 11 Fed. Sup. 158 (D. Nev. 1935).

STREAM FLOWS

The peak flow of the Walker River occurs during the months of May or June. Thereafter the water subsides rapidly so that in most years the flow, by the middle of July, is insignificant, without storage facilities, to meet the requirements of the land along the river which has been brought under cultivation. Even under natural conditions, that is, in the absence of upstream diversion, the water would not, in some years, reach the lands of the Walker

River Indian Reservation by the end of July, by reason of the seepage and high evaporation loss occurring with the river in a depleted condition at its source.

The region of the Walker River and its tributaries is arid and incapable of producing crops without artificial irrigation and the Walker River and its tributaries are the only source of the water supply for the irrigation of the lands. The precipitation is low, averaging less than 10 inches of water, the lands without artificial irrigation would be dry and arid and of little value.

There are two reservoirs that were constructed by the Walker River Irrigation District for the purpose of conserving the surplus waters of the Walker River, Bridgeport Reservoir, located on the East Walker River below the town of Bridgeport, having a capacity of 42,000 acre feet, and Topaz Reservoir, situated on the West Walker below Antelope Valley, having a capacity of 50,000 acre feet.

WALKER RIVER LITIGATION

The water rights on the Walker River and its tributaries in Nevada and California were originally adjudicated in a suit entitled Pacific Livestock Co. vs. T. B. Rickey, et al, referred to as Decree No. 731. The rights of the Walker River Indian Reservation were not litigated in that case even though the Government was invited to participate on behalf of the Walker Indian Reservation. In 1924 the United States filed a Complaint seeking to appropriate waters for the Walker Indian Reservation. That case was fully litigated and a decision rendered on June 6, 1935, U. S. vs. Walker

River Irrigation District, et al, Supra. A subsequent appeal followed to the Court of Appeals of the Ninth Circuit, which is set forth in 104 Fed. 334, 1939.

Pursuant to the foregoing litigation, the U. S. District Court adopted rules and regulations for the administration and distribution of the waters of the Walker River stream system. Six Districts were established encompassing specific areas of the stream system. District No. 1 represented the Walker Indian Reservation. The Walker River Indian Reservation is represented by a member of the Tribe that is appointed by the U. S. District Court. The remaining five districts, each have an individual representative, all of whom comprise the U. S. Board of Water Commissioners.

The rules and regulations provide for full decreed rights by discharge through a weir and inflow from the drainage system of the Walker River Irrigation District. A gauging station is located at the end of Mason Valley.

COMPACT COMMISSION

In 1955, the Legislature of the State of Nevada authorized the Interstate Compact Commission. The purpose of the commission was to provide for an equitable apportionment of waters between the State of Nevada and the State of California, and to promote interstate comity and further, other governmental cooperation and protection, and enhance existing economies and remove the causes of present and future controversies.

The concerns of the Walker River Paiute Tribe, the Bureau of Indian Affairs, the Department of Interior and Bureau of

Reclamation were all solicited and representatives of each of those bodies appeared before and participated in the commission meetings. Attached hereto are the minutes of the Fifty-Second Meeting of the joint California-Nevada Interstate Compact Commission in which George W. Hedden of the Bureau of Indian Affairs addressed the commission concerning the storage of waters in Webber Reservoir and of water diverted directly for use from that reservoir. A copy of the pertinent portions of that meeting are attached. A certified copy of the transcript of the proceeding will be presented.

A subsequent letter was sent to the joint Compact Commission by Mr. Hedden, requesting specific language changes in the Compact. A copy of that letter, dated June 15, 1965, is attached.

The Fifty-Third Meeting of the Compact Commission addressed itself to the specific language changes and the commission expressed their appreciation for the participation by the U. S. Bureau of Indian Affairs through George W. Hedden and J. W. Chamberlain. The Walker River Paiute Tribe was represented at that meeting by Walter Voorhees. The changes that were requested were adopted and incorporated within the Compact.

The Compact presented to Congress was not a document drafted through legislative fiat, but was a document that was formed through 13 years of public meetings and participation by all branches of government, from the Walker River Paiute Tribe, the Bureau of Indian Affairs, all counties and legislators of the State of Nevada and the State of California, to the public at-large, from all areas and spectrums. Insofar as the Schurz Paiute Indian Tribe is concerned provisions were made in the Compact that met every request that was presented. As a matter of fact, Mr. Hedden representing the Bureau of Indian Affairs, specifically stated that all of the changes that were made were satisfactory to him. A copy of the transcript of that hearing will be provided.

CALIFORNIA - NEVADA COMPACT

The Walker River Paiute Tribe opposes ratification of the Compact principally on the grounds that its interests are not adequately protected. The opposition of the Walker River Tribe suggests that the legal skirmishes which have prevailed on the Truckee River for the past 15 years will be repeated on the Walker. Such a course should not be followed for two reasons.

First, the experienced litigation has proven extremely expensive to all concerned, inconclusive and thus wasteful of resources. More importantly, however, on careful analysis it would seem that the Compact would benefit the Walker River Tribe far more than could ever be achieved by litigation.

The decision by the Supreme Court of the United States in Nevada vs. the United States, 436 U.S. 110, 77 L.Ed. 2d 509, 103 S.Ct. 2906, 1983, makes it abundantly clear that the Walker River Tribe cannot obtain any additional water under the implied Reservation Doctrine for its Reservation with a 1859 priority. There is no question in the United States vs. Walker River Irrigation District, the United States was given every opportunity to litigate the Reservation's entire right to the water of the Walker River and that the United States intended to take advantage of that opportunity. To the extent that the United States and the Tribe seek additional water on the grounds that the Court of Appeals for the Ninth Circuit applied an erroneous legal standard when it quantified the Reservation's rights in 1939, there is no doubt that all parties of the Walker River Decree can use that Decree as a bar to any such claim.

At present it is clear that the rights of the Walker River Indian Reservation are limited to about 9,455 acre feet of water to irrigate 2,100 acres of land. The Compact, in Article VIII recognizes and confirm substantial additional water rights for use on the Walker River Reservation with a priority date of 1933. Those rights include 13,000 acre feet per year for storage in Webber Reservoir and later rediversion to use and in addition 9,450 acre feet per year to be diverted from natural flow. In its comments on this legislation, the Walker River Tribe states that with this additional water it will be able to irrigate about 7,000 acres of land.

The Walker River Tribe states that it will seek to intervene in United States vs. Walker River Irrigation District, that it will seek a reserved right for land restored to the Reservation in 1936, and that it will seek formal recognition of its right to store water in Webber Reservoir and that it will seek assurances that the terms of the Decree are being enforced against upstream users. Ratification of the Compact will not prevent the Tribe from intervening in U. S. vs. Walker River Irrigation District and will not prevent the Tribe from enforcing the terms of the Walker River Decree. Moreover, the Compact, itself, gives formal recognition to the Tribe's right to store water in Webber Reservoir. With respect to the claimed reserved right for land restored to the Reservation in 1936, the Compact reply providing additional water referred to above, in all probability, provides the Tribe with a right superior to that which it would obtain through litigation.

The act which authorizes the Secretary of Interior to reserve certain land on public domain in Nevada for addition to the Walker River Indian Reservation allowed the Secretary to set aside an amount of land, not to exceed 171,200 acres of Public Domain in Nevada as an addition to the Walker River Indian Reservation. See 94 Stat. 1806

Also attached are copies of the Legislative History of the House of Representatives and Senate as contained in the 74th Congress, Second Session, Senate Report No. 1750 and House Report 2614. As the Secretary of Interior, in his report on Legislation indicated, proposed addition embraced "vacant Public Domain lands adjacent to the present Walker River Reservation."

It is clear that under existing law, when the property was added to the Reservation, at best the implied Reservation Doctrine reserved sufficient water to fulfill the purposes for which the lands were added to the Reservation. The lands would be treated as if they were a newly created Federal Reservation. The priority date for any water rights would be as of the date of the Reservation or September 25, 1936. See U. S. vs. Anderson, 736 Fed. 2d 1358, 1363 (9th Cir. 1984).

Moreover, the amount of the water reserved by implication will be limited to the amount necessary to accomplish the purpose of the reservation and no more. See, Ep. G. C. Cappaert vs. United States (426 U.S. 128, 1976). Here the Walker River Tribe will have considerable difficulty establishing that any major part of the addition was reserved for the purpose of irrigation and cultivation. The Secretary of Interior in his March 22, 1936, report to the Senate Committee on Indian Affairs, described the lands to be reserved and the purpose for reserving them as follows:

> The remainder of the lands, approximately 169,700 acres, most of which are on the East side of the present reservation, and surround [the tribe's] grazing reserve, is desirable as an addition for grazing purposes. The lands are being utilized almost exclusively by the Indians. Their character and location make them almost valuless to any other group. The range value of the land is so low that it takes from 150 to 200 acres per head, per year. Due to the increased interest of the Walker River Indians in the cattle industry, it is found that if the industry is to be developed and expanded further additional permanent grazing lands will be needed. These lands are now being used by the Indians. At the present time the Indians have only approximately 1,400 head of cattle. If they are to maintain their present herds upon a substantial basis and expand and develope their industry to an appreciable degree for their own support, public domain lands which they have been using for years for grazing purposes should be reserved for their use and benefit.
> (Emphysis added) (Copy attached as Exhibit " ").

It would appear that the major purpose of the 1936 addition to the Reservation was to provide additional grazing lands for the tribe. Arguably, the amount of water implied reserved will be limited to the amount of water necessary to provide for livestock to be grazed on the land and not the amount of water necessary to cultivate crops on all or any portion of the land. Even if the Executive Order added the lands to the Reservation included all 171,200 acres authorized to be added, the Secretary of Interior's report indicates that, at best, only 1,500 acres had been intended for irrigation.

The provisions of the Compact are, therefore, far more beneficial to the Walker River Tribe than will be litigation. The Compact will provide more water for the reservation than could ever be obtained under the implied Reservation theory. Moreover, the water provided by the Compact will have a priority date earlier than the 1936 priority date which would accompany any additional reserved water right.

In short, the Compact must be ratified by this Bill. With ratification, Nevada can approach the Section 107 Negotiations with assurances that the experiences on the Truckee River over the past 15 years will not be repeated on the Walker River or the Carson River.

LEROY ARRASCADA, Counsel for
Walker River Irrigation District

Minutes of Fifty-Second Meeting (65/3)
Joint California-Nevada Interstate Compact Commission

Held in Riverside Hotel
Reno, Nevada

Friday, June 4, 1965

Commission Members Present

Chairman Robert J. Newell, Federal Representative

William F. Bechdolt	George Henneu, Secretary
Hubert B. Bruns	Fred L. Fletcher
George E. Kehlet	Phil Hiibel
Henry G. Loehr	Bolton F. Minister
Reginald C. Price	Sam J. Strieby
	John D. Winters

Commission Members Absent

A. M. Barton, Vice-Chairman	William W. Bliss
Leland Ray Charlebois	Edward M. Peckham

Others Present

J. Stuart McMaster	Counsel for Federal Representative	Salt Lake City
James W. Johnson, Jr.	Counsel for Nevada Compact Commission	Reno
Fred H. Settelmeyer	Adviser to Nevada Compact Commission	Minden
Robert B. Bond	Assistant Secretary, Joint Commission	Sacramento
Roland D. Westergard	Secretary, Nevada Compact Commission	Carson City
Arthur M. Piper	U. S. Department of the Interior	Menlo Park
Russell J. Mays	Counsel, U. S. Forest Service	San Francisco
George W. Hedden	U. S. Bureau of Indian Affairs	Phoenix
~~James W. Long~~	U. S. Bureau of Indian Affairs	Stewart
~~Claude Dukes~~	Federal Court Watermaster	Reno
Robert C. Watson	U. S. Bureau of Sport Fisheries and Wildlife	Fallon
N. J. Geering	U. S. Bureau of Reclamation	Carson City
D. W. Sabiston	California State Water Rights Board	Sacramento
Allan Wendroff	California Department of General Services	Sacramento
Kenneth M. Turner	California Department of Water Resources	Sacramento
Howard F. McKissick	Washoe County Commissioner	Reno
N. E. Rowntree	Walker River Irrigation District	Yerington
Larry Masini	Walker River Irrigation District	Yerington
Edward A. Dyer	Truckee-Carson Irrigation District	Fallon
Adolph Moskovitz	Counsel for Placer County Water Agency, Antelope Valley Water District and Mono County	Sacramento
Alvin Landis	Counsel for El Dorado County Water Agency	Sacramento
Robert H. Shriver	Carson Water Company	Carson City
Clark Bigler	Sacramento Bee	Reno
Ann McKee	League of Women Voters	Reno
Alice Book	Certified Shorthand Reporter	Sacramento

Following the reading of this language it was moved by Mr. Minister that the language be adopted as read. The motion was seconded by Mr. Price, voted upon and carried.

D. Article XX, Subsection A4(a)

The Commission was informed that no changes had been made in the language of Subsection A4(a) as it appeared in the draft of January 22, 1965, as subsequently revised on February 9. However, Mr. Johnson had reported at the last meeting that it might be necessary to revise this language to make it conform to any changes which might be made in Subsection A4(b) which the Drafting Committee had been requested to revise.

Mr. Johnson explained that the Drafting Committee had not yet had the opportunity to meet and consider revision of A4(b) but he understood that the Bureau of Indian Affairs had recently submitted information concerning Weber Reservoir rights to the Drafting Committee. However, since no revision had yet been made of A4(b) it was impossible to tell at this time whether any revision would be required in Subsection A4(a).

Mr. Price stated that the California staff had prepared some language relative to this Subsection A4(b) which had not yet been reviewed by the California Commission, but he would propose that this staff language be distributed to members of the Joint Commission so that it could be reviewed during the luncheon period, thus paving the way for possible action on this matter after lunch. Mr. Westergard stated that the Nevada Commission had also drafted some language relative to this subsection which he would like the California members to consider during the lunch hour. All members were then supplied with drafts of language from both the Nevada Commission and the California staff and the luncheon recess was called at 11:50 a.m. The Chairman requested that the meeting be back in session at 1:30 p.m.

The meeting was reconvened at 1:45 p.m. and Subsection A4(b) of Article XX was again taken up for consideration. Mr. Price reported that during the noon hour the California Commission had reviewed the language prepared by its staff and had adopted it as a California Commission proposal so that it now could be considered in that light. Mr. Minister suggested that the people representing the Walker River Indians be asked for their thoughts on this California proposal. Mr. Hedden replied that during the noon hour the representatives of the Bureau of Indian Affairs had proposed certain revisions to the first paragraph of the proposal but found no reason to change the second paragraph. The language which representatives of the Indian Service were proposing as a revised paragraph one of the California proposal was then read by Mr. Hedden as follows:

> "In addition to rights recognized in Section A1 of this Article, there is allocated to Nevada for use on the Walker River Indian Reservation a maximum of 13,000 acre-feet per year for storage in Weber Reservoir and later rediversion to use, and in addition 9,450 acre-feet per year to be diverted from natural flow. Both allocations shall have a priority of 1933. The season for diversion of water to storage shall be from November 1 to October 31. The season for diversion of water directly to use shall be from March 1 to October 31 and that a maximum rate of 60 cubic feet per second for the purpose of determining the availability of water to satisfy rights junior to this allocation, or for division between the states as unused water, water which has been stored, or is available for storage under this allocation but is released or is allowed to pass through Weber Reservoir and is not rediverted to use on the Walker River Indian Reservation, shall be deemed to have been held in storage or used; provided, that the foregoing shall not apply to the extent that the appropriate representative of said reservation with the concurrence of the watermaster determines, prior to the release or passing through of such water from Weber Reservoir in any year, that it is necessary to release or pass through such water in order to provide storage space in Weber Reservoir as a means of protecting lands in Nevada against flood damage later in the year."

Mr. Hedden stated that he would like to see the Commission add one additional sentence to this first paragraph which would read: "Provided further that the foregoing shall not apply to the passage of water of inferior quality to that of Article XIV." In answer to a question from Mr. Moskovitz, Mr. Hedden indicated that the purpose of this last proviso was to permit the Indians to bypass water which might be of unusable quality and not be charged for it as though it had been stored.

At this point Mr. Strieby asked Mr. Hedden if the Bureau of Indian Affairs people would be willing to put a figure in the first paragraph to indicate a maximum rate of flow for both the 13,000 acre-feet of reservoir release and the 9,450 acre-feet of direct diversion. Mr. Hedden replied that he and Mr. Long had determined that the 60 foot per second maximum release would apply to the 9,450 acre-feet of direct diversion which would enable sufficient diversions up into July. If the 60 second-foot maximum rate of diversion was applied to the release or rediversion of storage then this maximum rate should be increased to 75 cubic feet per second instead of the 60. Mr. Strieby indicated that this latter figure would be more satisfactory to the Walker River Irrigation District.

In answer to a question from Mr. Moskovitz, Mr. Long indicated that the 75 cubic feet per second rate of diversion being discussed would be the total rate of diversion to the land, part of which is natural flow and part of which is withdrawn from storage. Mr. Moskovitz then asked why it would be necessary even to state anything other than the maximum rate of direct diversion and asked what the function would be of placing a maximum rate of diversion on water released from storage. Mr. Minister replied that as he saw it the purpose of placing the maximum rate of diversion on water released from storage as well as direct diversion would be to offer the upstream water users some assurance that in future years the maximum total diversion would not gradually increase.

After a brief discussion of the advisability of placing maximum rate of flow on the combined direct diversion and release from storage a recess was requested and granted. Following the recess, Mr. Price requested the Commission to give further consideration to the proposed additional last sentence in the first paragraph relating to water quality. Following considerable discussion of this language it was finally suggested by Mr. Piper that it be made to read as follows:

> "Provided further that the foregoing shall not apply to the passage of water of inferior quality to the extent that such passage may be necessary to assure that the water used on said reservation is of quality suitable for irrigation."

Mr. Price indicated that the California Commission could approve this revised language and Mr. Strieby stated that it also sounded acceptable to him, but he requested that before final action was taken on this language he be allowed to take it back to the members of the Walker River Irrigation District Board of Directors for review. Mr. Moskovitz suggested that the other points of this subsection still in question should also be clarified to the point where Mr. Strieby could also discuss these with his Board of Directors.

It was pointed out that the only point still in conflict was the maximum rate of diversion and whether it should apply to only the direct diversion or also the water rediverted from storage. Mr. Moskovitz suggested that following the end of the fourth sentence in the first paragraph the following language could be inserted:

> "The maximum total rate of diversion of water rediverted to use from storage in Weber Reservoir and of water diverted directly for use shall be 75 cubic feet per second."

Mr. Hedden indicated that this new language would be acceptable to him. However, he did raise the question of whether it was the intent of Mr. Moskovitz' language to also retain the limitation in the previous sentence relating to the maximum rate of 60 cubic feet per second from direct diversion.

Mr. Johnson stated it was his understanding that the 60 cubic feet per second mentioned in the previous sentence would then be included in the 75 cubic feet per second mentioned in Mr. Moskovitz' insertion. Mr. Price said it was his understanding that the language would retain the 60 cubic feet per second as a maximum diversion rate on natural flow and the 75 cubic feet per second limitation would be with respect to both natural flow and rediversion from storage.

Mr. Hedden replied that while he would be willing to accept either the 60 cubic feet per second limitation on direct diversion from flow or the 75 cubic feet per second on a combination of direct diversion and rediversion from storage, he did not want to see the two limitations placed in the language which Mr. Price had indicated. Mr. Moskovitz stated it was his intention in proposing the 75 cubic feet per second limitation that this be an additional allowance for both rediversion from storage and direct diversion within which the 60 cubic feet per second maximum direct diversion rate would still apply.

Mr. Minister stated his feeling that the Commission should agree either to the 60 cubic feet per second maximum diversion rate on direct diversion or the 75 cubic feet per second maximum diversion rate on both direct diversion and rediversion from storage. California members indicated a preference for the single limitation on direct diversion. Mr. Minister then requested that the Assistant Secretary furnish the interested parties with copies of the language which had been revised by representatives of the Bureau of Indian Affairs and also include the two alternatives relating to maximum rates of diversion which had been discussed so that these could be considered prior to the next meeting.

E. Article XX - Section B

The Commission's attention was next directed to the revised language of Section B of Article XX which the Nevada Commission was proposing and which it had made available to the California members. Mr. Minister pointed out that the Nevada Commission was proposing no change in Subsection B1 as it had been discussed and revised at the meeting of the Joint Commission on April 15.

IN REPLY REFER TO:
Economic Development

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Phoenix Area Office
P. O. Box 7007
Phoenix, Arizona 85011

June 15, 1965

Mr. Robert B. Bond
Assistant Secretary
Joint California-Nevada Interstate Compact Commission
P. O. Box 388
Sacramento, California 95802

Dear Mr. Bond:

Receipt is acknowledged of your letter of June 11, 1965, and enclosures relating to language for Subsection A4(b) of Article XX - Walker River Basin. As you will recall there was considerable discussion regarding the language of the California staff proposal of June 2 with proposed modifications by Messrs. Piper, Long and Hadden and further proposals for change on the part of the Commissioners of the two states and even others who were in the audience. According to my best recollection and also according to my notes there are two places where the draft furnished by your letter of June 11 does not reflect the final language which we understood was part of the proceedings.

The first instance occurs in the third sentence to which we would make an addition so that the sentence would read, "The season for diversion of water to storage shall be from November 1 to October 31 of the following year."

The second change is in the last sentence of the first paragraph. The sentence transmitted by your letter of June 11 reads, "Provided further that the foregoing shall not apply to the passage of water of inferior quality to the extent that such passage may be necessary to assure that the water used on said reservation is a quality suitable for irrigation." This sentence was in the draft as it was originally read following the lunch period but was replaced by a sentence authored by Mr. Piper reading as follows: "Provided further, that the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water quality standards provided by Article XIV."

There is no change in paragraph 2 and I believe that alternates 1 and 2 as stated by you for paragraph 1 are correct in both instances.

Copies of this letter are being sent to Messrs. Rowntree, Long and Piper. I have not endeavored to send copies thereof to the members and advisors of the Joint Commission. Should you feel it necessary so to do, I will appreciate your taking the initiative in the matter.

Currently a meeting has been scheduled by Mr. Rowntree of the Board of Directors of the Walker River Irrigation District and we have been invited to be in attendance for that portion of their meeting for consideration of Article XX, Subsection A4(b). We plan to attend the meeting which is scheduled for June 21.

Sincerely yours,

Sgd. George W. Eddon

Acting Area Director

cc:
Mr. Herb Rowntree, Manager
Walker River Irrigation District
P. O. Box 191
Yerington, Nevada

Mr. Arthur M. Piper
U.S. Geological Survey
Water Resources Division
345 Middlefield Road
Menlo Park, California 94025

Mr. James W. Long
Nevada Agency

Minutes of Fifty-Third Meeting (65/4)
Joint California-Nevada Interstate Compact Commission

Held in Holiday Hotel
Reno, Nevada

Tuesday, June 29, 1965

Commission Members Present

Chairman Robert J. Newell, Federal Representative

William F. Bechdolt
Hubert B. Bruns
Leland Ray Charlebois
George E. Kehlet
Reginald C. Price

William W. Bliss
George Hennen, Secretary
Fred L. Fletcher
Phil Hiibel
Bolton F. Minister
Edward M. Peckham
Sam J. Strieby
John D. Winters

Commission Members Absent

A. M. Barton, Vice Chairman
Henry G. Loehr

Others Present

J. Stuart McMaster	Counsel for Federal Representative	Salt Lake City
Fred H. Settelmeyer	Adviser to Nevada Commission	Minden
James W. Johnson, Jr.	Counsel for Nevada Commission	Reno
Fred G. Girard	California Deputy Attorney General	Sacramento
Robert B. Bond	Assistant Secretary, Joint Commission	Sacramento
Roland D. Westergard	Secretary, Nevada Commission	Carson City
Arthur M. Piper	U. S. Department of the Interior	Menlo Park
George W. Hedden	U. S. Bureau of Indian Affairs	Phoenix
J. W. Chamberlain	U. S. Bureau of Indian Affairs	Phoenix
Walter Voorhees	Walker River Paiute Tribe	Schurz
Robert C. Watson	U. S. Bureau of Sport Fisheries & Wildlife	Fallon
Claude Dukes	Federal Court Watermaster	Reno
Orville L. Abbott	California Water Commission	Sacramento
Kenneth M. Turner	California Department of Water Resources	Sacramento
David W. Sabiston	California State Water Rights Board	Sacramento
Frank Torkelson	California Department of Finance	Sacramento
Allan Wendroff	California Department of General Services	Sacramento
N. Edward Denton	Mono County District Attorney	Bridgeport
C. B. Kinnison	Washoe County	Reno
H. F. McKissick	Washoe County Commissioner	Reno
Adolph Moskovitz	Counsel for Antelope Valley Water District, Placer County Water Agency, & Mono County	Sacramento

Others Present (cont'd)

H. E. Rowntree	Walker River Irrigation District	Yerington
Amos Mencarini	Walker River Irrigation District	Yerington
Edward A. Dyer	Truckee-Carson Irrigation District	Fallon
Garry D. Stone	Carson Water Subconservancy District	Gardnerville
Robert S. Leighton	Sierra Pacific Power Company	Reno
Frank O. Spring	Antelope Valley Mutual Water Company	Coleville
Fred H. Dressler	Rancher	Gardnerville
James Sloan	Attorney	Reno
Clark Bigler	Sacramento Bee	Reno
Alice Book	Certified Shorthand Reporter	Sacramento

Notice having been duly given by the Chairman, the members of the Joint California-Nevada Interstate Compact Commission met in the Holiday Hotel, Reno, Nevada, on Tuesday, June 29, 1965. Chairman Newell called the meeting to order at 10:20 a.m. At his request the roll was called and a quorum was reported present.

Approval of Minutes of Prior Meeting

On motion by Mr. Bruns, seconded by Mr. Price and carried, the minutes of the regular meeting of June 4, 1965, were approved as presented.

Election of Officers for Fiscal Year 1965-66

It was moved by Mr. Peckham, seconded by Mr. Price and unanimously carried, that the present slate of officers be continued through the forthcoming year.

Article V - Interbasin Transfers of Use

Mr. Johnson explained that the Nevada Commission had requested that this proposed Article of the compact be deleted. It was their feeling that Section E of Article VII provided for the same thing which Article V was intended to cover. The Nevada Commission has no objection to the use of Lake Tahoe waters in other basins by exchange but feels that the language of Article V is redundant. He explained however if the California Commission felt that it should be left in the

Weber Reservoir Rights - Walker River Basin

Mr. Minister explained that at a recent meeting of members of the Walker River Irrigation District, its Commission representatives and representatives of the Bureau of Indian Affairs, a draft of such Subsection A4(b) of Article XX relating to Weber Reservoir water rights which had been drafted by the California Commission staff was reviewed. As a result of this meeting some minor changes in the proposal were made as indicated in the document entitled "California Staff Proposal with changes of 6/2/65 and 6/21/65 of the Walker River Irrigation District Board Meeting." Mr. Minister stated that this language, which had just been distributed to the Commission members, incorporates the first of the two alternates which had been discussed at the previous meeting of the Commission. This is the alternate which provides a maximum diversion rate of 60 cfs per second for water diverted directly for use from streamflow.

Mr. Minister pointed out that this draft also included a slight editorial change in lines 6 and 7 in which the phrase "of the following year" was added to the California staff proposal. He continued that the California draft referred in the 11th line to water "which has been stored or is available for storage". The revision which he had presented to the Commission this date struck the phrase "is available for storage" and inserted in its place the phrase "which can be physically stored or diverted to use". This revision was made as a matter of clarification. One other change which had been made at the meeting of the Irrigation District interests and representatives of the Bureau of Indian Affairs, occurred in the last sentence of the first paragraph. This had been revised to read as follows:

> "Provided, further, that the foregoing shall not apply to passage of water of inferior quality to the extent that such passage may be necessary to maintain the water quality standards provided by Article XIV."

He explained that this last change had been made to provide that the Commission should have continuing control over the quality of waters which reached Weber Reservoir rather than permit an arbitrary decision of what water was suitable or unsuitable for use from a quality standpoint by those at the lower end of the river system.

Mr. Minister expressed his appreciation to Messrs. Hedden and Chamberlain who traveled from Phoenix to attend the meeting of the Walker River Irrigation District at which this language was discussed. He stated that they were most helpful in working with the District representatives in revising the language of this provision and he wished to compliment them for their help.

In discussing the proposed changes presented by Mr. Minister, Mr. Moskovitz pointed out that Article XIV of the proposed compact covering water quality, covers restrictions on discharge of wastes in one state which would materially and adversely affect the quality of waters in the other state. There is nothing in the language of Article XIV which affects intrastate waters. The discharge of waste in Nevada which could affect the quality of the water of the Walker River for domestic, recreation and agricultural uses or the maintenance and enhancement of fishery resources at a point further on downstream in Nevada below the point where the discharge was made, is not covered by the provisions of Article XIV because it is solely an intrastate matter. California's obligation under Article XIV is to insure that discharges of waste in California will not adversely affect the quality of the water as it passes the state line into Nevada. Mr. Moskovitz continued that the proviso as proposed by Nevada would raise the water quality level above that needed for existing uses and therefore would cause a greater burden on the whole stream system in satisfying the Weber Reservoir right, so that by virtue of this increased burden on the stream system, California would suffer although it would have no control over the deterioration of the quality of the waters between the state line and Weber Reservoir.

Mr. Minister asked Mr. Hedden and Mr. Piper if they would accept an amendment to the language under discussion which would say that the proviso would refer to the passage of such water as may be necessary to maintain the quality of water at a level suitable for irrigation. Mr. Hedden replied that he would have no objection to the change suggested by Mr. Minister, and Mr. Piper indicated that he had no preference over the language as it was originally included in the revised draft or as proposed for change by Mr. Minister. He did point out that he could not agree with Mr. Moskovitz' interpretation of the first sentence of Article XIV that this applies specifically to the maintenance of quality standards at the state line. Mr. Piper indicated it was his belief that Article XIV was general and would apply throughout the three river basins and that the references to discharge of waste waters are merely references to specific situations that might affect the general standards of water quality stated in the first sentence. Following further discussion on this point a short recess was called to permit members to revise the last sentence of the first paragraph of Subsection A4(b). Following the recess, Mr. Minister moved the adoption of language for Subsection A4(b) of Article XX including the just revised last sentence of the first paragraph which he then read into the record in its entirety. The motion was seconded by Mr. Price, voted upon, and carried. This adopted language is attached as Attachment No. 1 and is hereby made a part of these minutes.

Mr. Minister thereupon stated that this action concluded a full resume' of Article XX, that the Commission had acted upon each and every part of Article XX, and he would therefore move the adoption by the Commission of Article XX in its entirety as the transcript records it has been modified from the language presented by the Joint Drafting Committee in the draft of compact dated January 22, 1965.

He explained that it was his desire to have the Commission adopt Article XX at this time because he planned immediately to bring up the matter of the previously discussed resolution concerning the Bureau of Reclamation's proposed feasibility report on the Walker River Project. In this resolution he wanted to bring this project into proper perspective by insuring that the comments and suggestions of all interested parties in both states would be brought to the Bureau of Reclamation's attention at the earliest possible date so that in finalizing its report the Bureau would be fully informed of the views of all interested parties and agencies. He continued that in the proposed resolution which had been prepared by California and discussed earlier, only portions of Article XX had been quoted. It was his belief that all of Article XX should be made a part of the resolution so that the Bureau may know that a completed article on the Walker River had been adopted by the Commission and the Bureau could proceed in its studies with the assurance that there would not be a series of numerous revisions to the compact language which might affect its project feasibility studies.

Mr. Minister then moved the adoption of Article XX as revised by this Joint Commission through a series of Joint Commission meetings and as attested by the transcript of these meetings. The motion was seconded by Mr. Fletcher. At this point California requested a caucus to consider the motion and the Chairman declared a luncheon recess would be called to permit both Commissions sufficient time to consider the matter before them. The meeting was thereupon recessed at 12:30 p.m.

Following the luncheon recess the meeting was called back to order at 1:50 p.m., and with the consent of the second, Mr. Minister withdrew the motion he had made immediately preceding the noon hour. Referring to the draft of compact dated January 22, 1965, as revised, and specifically to page 59 of that draft, Mr. Minister then moved that the language of the sentence starting on line 9 of the page and the subsequent sentences in that subsection be changed to read as follows:

> "Consequently if such a joint project has not been authorized prior to June 30, 1968, or if an authorized project is rejected by either or both states under applicable approval procedures of state law, either state may develop its share of the unused water of the West Walker River allocated by Section B1 of this Article by surface storage separately and at sites other than upstream from Antelope Valley. Should the commission or the joint commission which negotiated this compact decide that it is in the best interest of each of the two states, it may extend such period for such additional period or periods as seem reasonable, or it may reduce such period as may seem reasonable."

Mr. Minister's motion was seconded by Mr. Charlebois, voted upon and carried.

Mr. Minister then returned to the motion which he had earlier withdrawn and again moved the adoption of Article XX as modified by action of the Joint Commission as attested to by the transcript of the meetings of the Joint Commission in which this action was taken. This motion was seconded by Mr. Price, voted upon and carried.

Proposed Resolution Re: USBR Feasibility Report on Walker River Project

Mr. Minister referred to a proposed resolution dated April 9, 1965, revised on April 15, 1965, which had been presented to the Joint Commission by California interests which requested that the proposed report of the Bureau of Reclamation on its Walker River Project be completed at the earliest date possible and further that the Congress of the United States be urged to enact legislation authorizing construction of this project and to appropriate funds for preproject planning in order that construction may be initiated prior to June 30, 1968. He suggested that this resolution be revised to provide that (a) one whereas would recognize the submittal of the proposed feasibility report by the Bureau of Reclamation, (b) a second whereas would state that it is the duty of the compact commission to attempt to apportion waters equitably between the two states, (c) a third whereas would acknowledge the fact that the Joint Commission in 1956 by resolution requested the Bureau to investigate the feasibility of various developments on the West Walker River, (d) a fourth whereas would quote in its entirety Article XX as just adopted by the Joint Commission. The resolution would then resolve that the interested parties in each state, including the Walker River Irrigation District, the Walker River Indian interests, the County of Mono, Antelope Valley Mutual Water Users Association, and others who have a ligitimate interest in the joint project, would be placed on notice that it would be incumbent upon those interests to make known to the Bureau of Reclamation the interest they would have served and the benefits that they would obtain from a joint project and request their cooperation with the Bureau of Reclamation to that end.

The resolution would also resolve that the Bureau of Reclamation should consolidate the stated interests and benefits of all of those commenting on the report into a final feasibility report at the earliest possible date, giving due consideration to the provisions of Article XX of the proposed compact adopted by the Joint Commission this date, and would further resolve that the report as finalized by the Regional Office of the Bureau of Reclamation be duly processed by the federal agencies to permit its earliest possible submission to Congress and to permit the authorization of Congress by enabling legislation for such project. Further, the resolution would memorialize the Senators and Congressmen of the two states and the Regional Director of the Bureau of Reclamation to aid and assist and abet this project. Mr. Minister then repeated that he was moving adoption of this approach to the preparation of a resolution concerning the Bureau of Reclamation's Walker River Project and requesting that the Drafting Committee prepare a draft of such resolution in conformance with the approach which he had just outlined. The motion was seconded by Mr. Charlebois.

Mr. Price raised the question of how much time should be allowed to those interested parties and agencies to forward their comments and expressions of interest to the Bureau of Reclamation. Discussion of this point indicated that a period of 45 days seemed reasonable and it was agreed that the date of August 15 should be inserted in the resolution as the date by which all comments should be submitted to the Bureau of Reclamation. At this point Mr. Minister withdrew his original motion for preparation of a draft of the resolution, and moved that the resolution to be prepared by the Drafting Committee in conformance with the approach which he had outlined be adopted and that this resolution be presented at the next meeting of the Commission for the information of the members. Acceptance of this amended motion was indicated by the second, whereupon it was voted upon and carried. Mr. Girard commented that the Assistant Secretary had just been directed by this approved motion to send the resolution out without further review once he had received it.

Amendment to Article V - Interbasin Transfers of Use (Cont'd)

Referring to the request which had been made to the Drafting Committee earlier in the meeting, Mr. Johnson read the ensuing language which had been prepared to cover the problem of the Lake Tahoe Basin with respect to interbasin transfers of water.

> "Nothing herein shall preclude the use of Lake Tahoe as a physical facility to accomplish the use of Truckee River waters in the Carson River waterhsed, or Carson River waters in the Truckee River watershed, but in no event shall the use of Lake Tahoe as such a physical facility be inconsistent with any provision of Article XVII of this compact, including but not limited to those provisions concerned with lake levels and water quality."

Mr. Johnson further explained that this was intended to be an appendage to the existing article. It was then moved by Mr. Price that this language be approved for addition to Article V. The motion was seconded by Mr. Fletcher and opened for comment. Mr. Hiibel asked if in the opinion of the representatives of the United States there would be any infringement of rights involved in the

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74th Congress, 2d Session } SENATE { Report No. 1750

WALKER RIVER INDIAN RESERVATION, NEV., ADDITION OF CERTAIN PUBLIC DOMAIN

February 24 (calendar day, Apr. 7), 1936.—Ordered to be printed

Mr. Thomas of Oklahoma, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 3805]

The Committee on Indian Affairs, to whom was referred the bill (S. 3805) to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation, in the State of Nevada, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

On page 1, line 7, just after the word "township" insert "11".

On page 2, line 1, after the word "hereof" change the period to a colon and insert the following:

> *Provided further*, That the Secretary of the Interior shall arrange, either by the maintenance of existing stock driveways or otherwise, to permit stock owned by others than Indians to cross the reservation at designated points.

On page 2, after line 7 insert a new section as follows:

> Sec. 2. Title to all minerals in said lands is hereby reserved to the United States and shall be subject to all forms of mineral entry or claim under the public land mining laws: *Provided*, That the Paiute Indians of the Walker River Reservation shall be paid by mineral claimants for the loss of any improvements on any lands located or withdrawn for mining purposes under rules and regulations to be prescribed by the Secretary of the Interior; *And provided further*, That an annual rental of not less than five cents per acre shall be paid to the superintendent of the reservation to be deposited to the credit of the tribe as compensation for loss of use or occupancy of any lands withdrawn for mining purposes or mineral entry. No mineral patent shall be granted to any applicant who is delinquent in the payment of rental or in the payment of any damages due the tribe under the provisions of this Act.

The proposed amendments to this bill were suggested by Senator McCarran, author of the bill, and the Commissioner of Indian Affairs joins in recommending the said amendments for approval.

The Secretary of the Interior in his report on this bill, under date of March 26, 1936, recommends favorable consideration, and states that the Acting Director of the Bureau of the Budget advises that there is no objection to the presentation of the said report to this committee.

The Secretary of the Interior's report on the bill is as follows:

THE SECRETARY OF THE INTERIOR,
Washington, March 26, 1936.

Hon. ELMER THOMAS,
Chairman, Committee on Indian Affairs,
United States Senate.

MY DEAR MR. CHAIRMAN: Further reference is made to your request of February 26 for report on S. 3505, a bill to authorize the Secretary of the Interior to reserve certain lands on the public domain in Nevada for addition to the Walker River Indian Reservation.

The bill authorizes the Secretary of the Interior to set aside not to exceed 171,200 acres of public-domain land in Townships 12, 13, 14, and 15 North, Ranges 27, 28, 29, 30, and 31 East, Mount Diablo meridian, Nev., as an addition to the Walker River Indian Reservation. The proposed addition embraces vacant public-domain lands adjacent to the present Walker River Reservation. A considerable portion of these lands were formerly Indian owned, but were included in an area relinquished by them under the act of May 27, 1902 (32 Stat. 260). The lands involved are located and described approximately as follows:

On the west side of the reservation—

All of secs. 3, 4, 5, 9, 10, 11, 14, 15, 23, 26, and W½ W½ sec. 24, W½ W½ sec. 25, T. 12 N., R. 28 E.

N½ and SE¼ sec. 1, E½ sec. 24, sec. 25, and the unsurveyed lands which will become SE¼ sec. 23, SW¼ sec. 24, NE¼ sec. 26, and the E½ sec. 36, T. 13 N., R. 27 E. All of secs. 6, 17, 19, 20, 28, 29, 30, 32, 33, and E½ sec. 7, W½ sec. 8, E½, E½, SW¼, and lots 3 and 4, sec. 18, W½ sec. 21, sec. 31, T. 13 N., R. 28 E.

The unallotted portions of lots 1, 2, 3, 4, and S½ N½ sec. 5, T. 14 N., R. 27 E.

All of secs. 30 and 31, T. 14 N., R. 28 E.

On the east side of the reservation—

Beginning at the W¼ corner of sec. 24, T. 15 N., R. 27 E.; thence north ½ mile, thence east 1 mile; thence north 1 mile; thence east 6 miles; thence south 2 miles; thence east 12 miles; thence south 1 mile; thence east 2 miles; thence south 1 mile more or less to the present boundary of the reservation as surveyed and marked by Emergency Conservation Work Engineer, M. A. Hall; thence east to a point 2 miles east of the northeast corner of the reservation; thence south to where this line intersects with the projection of the south line of township 13 N., R. 29 and 30 E.; thence east along this projected line to the range line on the west side of R. 32 E., as now outlined; thence south to a point formed by the intersection of this range line and the projection of the south boundary of the present reservation as surveyed and marked by M. A. Hall; thence west along this projection, the south line of the reservation, and a western projection of this line to a point ½ mile east of the northeast corner of sec. 1, T. 11 N., R. 29 E.; thence southerly along this line to a point ½ mile east of the southeast corner of sec. 25, T. 11 N., R. 29 E.; thence westward to the southeast corner of said section; thence westward along the south boundary of secs. 25 and 26, T. 11 N., R. 29 E., to the shore line of Walker Lake; thence north to the intersection of the Lake Shore and the present reservation line; thence northward and westward along the reservation line to the place of beginning; excluding those lands already included in the reservation.

Part of the land, as above described, is located in township 11 north, range 29 east, which township has been omitted from the bill. It is recommended that the bill be amended by inserting "11," just after the word "townships" in line 7, page 1.

Under the act of June 21, 1906 (34 Stat. 358), certain tracts of timber land on the reservation were withheld from disposition to meet the reasonable requirements of the Indians for fuel and improvements, before opening their surplus lands to public entry as authorized by the act of May 27, 1902, supra. Additional lands have been found necessary to meet the present requirements of the Indians for a wood supply. This accounts for a small tract of 1,440 acres of woodland, formerly Indian owned, being included in the present proposed withdrawal.

The remainder of the lands, approximately 169,700 acres, most of which are on the east side of the present reservation and surround their grazing reserve, is desirable as an addition for grazing purposes. The lands are being utilized almost exclusively by Indians. Their character and location makes them almost valueless to any other group. The range value of the land is so low that it takes from 150 to 200 acres per head per year. Due to the increased interest of the Walker River Indians in the cattle industry, it is found that, if the industry is to be developed and expanded further, additional permanent grazing lands will be needed. These lands are now being used by the Indians. At the present time the Indians have only approximately 1,400 head of cattle. If they are to maintain their present herds upon a substantial basis and expand and develop their industry to any appreciable degree for their own support, the public domain lands which they have been using for years for grazing purposes should be reserved for their use and benefit.

Although the lands in question have been and are being used by the Indians practically to the exclusion of all others, part of this area has been utilized to a limited extent by non-Indians for stock-driveway purposes. When making a definite selection of lands to comprise the reserve, this fact will be given appropriate attention and such stock driveways maintained as may be found necessary, or other arrangements made to permit non-Indian stock to cross the land at points to be agreed upon. As all of the public-domain lands in question were temporarily withdrawn from disposition by Executive order of November 26, 1934, for classification, etc., under the Taylor Grazing Act of June 28, 1934 (ch. 865, 48 Stat. 1269), it is necessary that this withdrawal order be revoked insofar as it applies to such of these lands as may ultimately be selected for addition to the Indian reservation. Valid existing rights are not to be affected, and the proposed withdrawal will not interfere with the administration of grazing on adjacent public-domain lands under the Taylor Grazing Act, as the users of existing driveways adjacent to the reserve are to be granted permission to cross the lands, as mentioned above.

In view of the foregoing, I recommend that S. 3805, with the amendment suggested, receive favorable consideration.

Under date of March 20, the Acting Director of the Bureau of the Budget advised that "there would be no objection by this office to the presentation of this report to the committee."

Sincerely yours,

Harold L. Ickes,
Secretary of the Interior.

STATEMENT OF BOLTON F. MINISTER, PAST MEMBER OF THE JOINT CALIFORNIA-NEVADA COMPACT COMMISSION

Mr. MINISTER. Mr. Chairman, ladies and gentlemen, my name is Bolton Minister and I am a former member of the California-Nevada Interstate Compact Commission from the Walker River.

Let me call your attention to the written testimony I submitted to you. I am sure you will find it helpful in understanding the compact of the Walker River. I feel that today I can best serve your needs by responding to objections I understand are being raised to the Walker River compact.

I want to go to the essence of the compact. The compact does not grant rights to private parties or entities. Nor does it take rights away from private parties or entities. The compact allocates waters between the State of California and the State of Nevada that are necessary to the States if the needs of private parties and entities are to be served. The compact deals with the relationship of the two States, California and Nevada.

The way water rights are perfected are by a court adjudication or by appropriation under relevant State law, or by a claim of Federal right, which claim is then subject to Federal court interpretation.

The Walker River Indian Tribe would have you believe that the compact does not meet the needs of the tribe. Mineral County would have you believe the compact does not meet the needs of Walker Lake. Both of these objections are raised in an attempt to create water rights for entities by the compact process.

The compact on the Walker River makes three types of allocations to the States of California and Nevada. The first type of allocation is recognition of Federal decree C-125, which confirms to each State the waters necessary to the fulfillment of the decree. Walker River Indian Reservation rights are established by this decree. But by compact, Walker River Irrigation District rights under the decree C-125 to store waters are limited. This allocation amounts to 85 to 86 percent of the average annual flow of the Walker River.

The second type of allocation is the recognition of existing diversion and uses, and water is allocated to each State to meet these uses. Water rights perfected under relevant State law, but not a part of decree C-125 are covered by this allocation. The waters for storage in Webber Reservoir, 13,000 acre feet in total, and 9,450 acre feet of direct diversion from natural flow, both with a 1933 priority are allocated to Nevada for use on the Walker River Indian Reservation.

These Indian reservation provisions reflect existing and claimed uses in excess of decree C-125, and are the result of direct involvement in the proceedings and negotiations of this compact by Mr. George Hedden, Mr. J.R. Chamberlain, and Mr. James Long, all Bureau of Indian Affairs representatives, legally representing and with obligation to represent the Walker River Indian Tribe.

I have with me certified transcripts of the proceedings of compact meetings showing this participation and the presence of Mr. Walter Voorhees, a tribal representative. Now, this is in response to Senator Burdick's concerns on representation, direct. And I would be glad to quote you from the certified transcripts. I think possible I should do that to show you the extent of the——

Mr. TAYLOR. Perhaps we could borrow those and xerox the appropriate pages.

Mr. ARRASCADA. I have xeroxed copies here for the chairman.

Mr. MINISTER. I believe they go for a number of pages, and I would just show you how it starts.

Mr. TAYLOR. I notice that Mr. Arrascada has some attachments to his statement.

Mr. ARRASCADA. Yes; I have copies here of the compact meeting, the 52d meeting, held on June 4, 1965. It is a certified copy of the transcript of testimony certified by a shorthand reporter, and that appears on the last page. I have a second copy here of the 53d meeting which was held at the Holiday Hotel in Reno on Tuesday, June 29, 1965. And that also is certified, and both of these are copies of the originals that Mr. Minister has brought with him here today.

Mr. MINISTER. Mr. Chairman, starting with the meeting on June 4, 1965, the 52d meeting of the Joint California-Nevada Interstate Compact Commission, dealing with Walker River Indian Reservation rights in excess of decree C-125, I make the statement:

Mr. Chairman, I think we ought to call upon our people who are representing the Walker River Indian rights in the area, and ask for their thinking in the whole area of description of Webber Reservoir storage.

Twenty more pages are concerned with the statements made by the Indian representatives in this particular meeting. It winds up in a following meeting on June 29, and the issue has been drafted with the input and with the language suggested by Federal representatives for the Walker River Indian Reservation. And after the windup I say:

> Mr. Chairman, may I express myself on the record as to my appreciation of the efforts of Mr. Long, Mr. Hedden, and Mr. Chamberlain, who came from Phoenix and attended the meeting on the Walker River Irrigation District. May I say that these people were most courteous and most knowledgeable, and they are the first Government people I have ever had dealings with that would talk to you across the table and lay the cards out on the table, and end up saying yes or no. And I appreciated this and I want to compliment them on the record for it.

Now, you have the copies and you can read the testimony inbetween where the representation was there, and was effective, and did serve the need of the Indian.

Mr. TAYLOR. We will retain those transcripts in our files. I don't think we will make them a part of the printed record, but we will have them available——

Mr. MINISTER. Now, altogether I have been talking about existing uses and diversions. Now, this altogether amounts to 8 or 10 percent of the average annual flow of the Walker River. That is including the Walker River Indian Reservation provisions, with by far the largest portion being the Indian reservation provision. A provision that admits water that is not under a court adjudicated right, and not a right by appropriation under State law.

The last type of allocation to the two States is the allocation of "unused water," defined to be the water in excess of the previous two types of allocations. This water amounts to approximately 5 percent of the average annual flow of the Walker River system. This water would be available from natural flow only a few days a year; probably 10 to 15 days in the average year, and would not flow at all in about 3 years out of 10. It requires development by storage facility to firm up an annual yield. And about 8 acre-feet of space would be required to provide an annual yield of 1 acre-foot.

The compact does not give any entity the right to this water. The right to the water would be from an application for permit to the use of the water through the State of Nevada for its share of the unused water, or to the State of California for its share of the unused water.

The waters of the Walker are limited. The compact cannot change a Federal court decree, C-125. The compact cannot revoke valid State approved water rights. Only about 5 percent of the Walker waters were the subject of the commission's discretion on how to divide and allocate between the States. And the commission's action does not predetermine any entity's right to this 5 percent of the waters.

Mr. Chairman, I would like to also address and answer some things that didn't get quite answered this morning, if I may. And this is relative to the Indian representation on the compact commission. Mr. Girard addressed this also, and I appreciate his statements on it, and they were correct.

The Federal Government does have representation and has a chairman, a nonvoting chairman on the permanent commission as they had in the negotiating commission. The compact commission, as the negotiating commission, never operated in a vacuum. The Federal representative was there, he was represented by legal counsel, all of the agencies of the Federal Government were represented in almost every single meeting and river committee meetings.

But the compact deals with matters between the States, not individual entity rights. Now, on the Walker River, our compact designates, and one of the provisions the Government is to be bound by relates that an Indian representative would be on the Federal Court advisory board in the administration of decree C-125.

Since Government water by compact is part of the State allocation, any Government agency has an equal opportunity with any other entity to have the same treatment before the compact commission once we have an established compact commission. They are part of the State, their allocations are part of the State. They have the same right to representation and the same right to sit and be heard on any matter the way the compact is drafted.

Thank you, Mr. Chairman. That is the conclusion of my testimony, and I am certainly willing to answer any questions you may have as far as I can.

[Mr. Minister's prepared statement follows:]

TESTIMONY OF BOLTON F. MINISTER
BEFORE THE SENATE SELECT COMMITTEE
OF INDIAN AFFAIRS ON S.1558
OCTOBER 2, 1985

Gentlemen:

I request favorable and timely action on the subject Bills, and in particular on Article VIII " Walker River Basin" of Title II.

In support of this request I seek to aid you in your understanding of the allocations between the States of California and the State of Nevada of the waters of the Walker River, and I will address erroneous concepts in statements made to you.

First I present my qualifications to be heard on the subject of my request to you. I was appointed a member of the California-Nevada Interstate Compact Commission representing the Walker River Irrigation District by Governor Grant Sawyer on June 20, 1961, and I continued to serve in active roll on the Commission until the fall of 1973, when by reason of the impending sale of my property in the Walker River Irrigation District. I resigned from the Commission. The whole language in the Bill before you as it refers to the Walker River, was negotiated, drafted, passed and ratified by both California and Nevada during the period I was a member of the Commission.

Now I will go to your understanding of the allocation of the waters of the Walker River. At the time negotiations between the states commenced, there was in existence a Federal Court Decree, C-125, which adjudicated the major portion of the waters of the Walker River stream system in both California and Nevada by years of priority in specific amounts to specific uses at various locations. Decree C-125 was preceeded by Federal Court Decree 731, which prescribed the regimen for water use through the priority year of 1919 for the area in California and Nevada upstream from the Walker River Indian Reservation, which itself is immediately above Walker Lake, the terminus of the river. Decree 731 was reopened to adjudicate the rights of the Walker Indian Tribe and Decree C-125 integrated the rights the Court determined applicable to the Walker Indian Reservation with rights previously adjudicated in Decree 731, and further took notice of water rights perfected during the period following the entry of Decree 731 up until Decree C-125 was entered.

With this back ground, the logical approach to the problem of allocating the waters between the states was to recognize Decree C-125 and confirm to each State the waters necessary to the fulfillment of the Decree. This is the approach followed in the Walker River Compact with the following exception: The Compact provisions limit, as between the states, the rights of the Walker River Irrigation District under Decree C-125, to store water in Topaz Reservoir on the West Walker River, and Bridgeport Reservoir on the East Walker

River that appeared to be repetative, limiting storage at Topaz Reservoir to 85,000 acre feet per year, and limiting storage at Bridgeport Reservoir to 57,000 acre feet per year. Agreement was also reached that has resulted in the cancellation of Walker River Irrigation District permit applications referred to in C-125 that would allow the storage of more water than 85,000 acre feet in Topaz Reservoir and 57,000 acre feet in Bridgeport Reservoir. Thereby under terms of Title II, Article VIII there is a specific limit to the Walker River Irrigation District storage rights that have been documented in Decree C-125.

Beyond this, it appeared most logical to consider those appropriations of water and uses of water under California State Water Law (riparian and litteral right water), and such other minor uses as being existing as of 1964, not having been previously recognized in Decree C-125. This approach is the identical approach the Court made in admitting water appropriated between the dates of filing Decree 731 and Decree C-125. An allocation was made to each state in the amount of existing diversions and uses of water.

Note should be taken at this point of Title II, Article III, C, which states, "The use of water by the United States of America or any of its agencies, instrumentalities or wards, shall be charged as a use by the state in which the use is made. To fully protect all of the Nevada claims to existing water use, the Nevada members of the Walker River negotiating committee actively sought and received the participation, guidance and assistance of those responsible for the Walker River Indian Reservation and with their help the specific recognition and allocation was made by Title II, Article VIII, A.4(b) to Nevada for use on the Walker River Indian Reservation as a present use of 13,000 acre feet per year for storage in Webber Reservoir. In addition, the allocation to Nevada for use on the Walker River Indian Reservation of 9450 acre feet per year of water to be diverted from the natural flow of the river was given a priority of 1933 and is intended to reflect the existing (as defined by Title II) use and claimed needs of the Walker River Indian Reservation. Further, it was provided that these allocations did not require the diversion or storage of water not of suitable quality on the Reservation.

Having recognized Decree C-125, then recognizing existing uses subsequent to the date of the Decree, and allocating to the States the water necessary to fulfill these rights, all waters in excess were defined as "unused water" and allocated 35% to the State of California, 65% to the State of Nevada, and provisions were made permitting the development of this water by storage under specific criteria that resolved long standing disputes between the two states.

Another issue of long standing contention between the States was resolved by a provision relating to the proceedure of appointment of a Water Master, who would have the responsibility and power to administer Decree C-125 and also the allocation between the two states and the rights to the waters in the allocation.

Having reviewed the major provisions of the Compact on the Walker River, I would like to correct some misunderstandings of Compact affects as they relate to the Walker River, specifically the comments of the Walker River Paiute Tribe, and their counsel, Mr. Scot McElroy.

Statements that the Compact does not meet the needs of the tribe, and that this is a reflection of lack of consultation simply are not true.

1. Decree C-125 addressed the needs of the Tribe up until the time of its filing in 1936. This adjudication by the Federal Court is recognized and the water rights are confirmed by Title II, Article VIII, A, 1.

2. Existing and claimed use in excess of Decree C-125 on the Walker River Indian Reservation as provided by Title II, Article VIII, A 4(b) is the result of direct involvement in the proceedings and negotiations of the California-Nevada Interstate Compact Commission, the Nevada Commission of the California-Nevada Interstate Compact Commission, the Walker River Committee of the California-Nevada Interstate Compact Commission, and a special meeting with Directors of the Walker River Irrigation District by Mr. George Hedden, Mr. James Long, Mr. J. W. Chamberlain, all United States Bureau of Indian Affairs representatives, legally respresentatives of the Tribe's interest and with obligation to represent the Tribe, and by Mr. Walter Voorhees, a Tribal representative at most of those meetings. The provisions of this Article are a direct result of the input of these people and reflect the uses and claims of the Tribe as they saw them.

3. It should be noted that the allocations referred to in No. 2 above, do not limit the use of water to any specific ground. The allocation is "for use on the Walker River Indian Reservation".

Statements that the Compact purports to confirm upstream storage rights with early priority dates even though those storage facilities have never been built are in error.

1. As previously stated in this recital of Walker River Compact, the Walker River Irrigation District's rights to store water under the Decree C-125 has been limited.

2. Applications to the State of Nevada for permit to store Nevada's "unused waters" as defined by Compact, must be perfected by construction and beneficial use of the waters, otherwise no right can be conferred by the State. The Compact does not confer rights to private parties.

Statement is made that the Compact appears to confirm existing upstream uses. The amount of which is not even known.

1. This is true to a limited degree.

   A. The existing upstream uses in Nevada can easily be determined by reference to applications for appropriation made to the Nevada State Engineer, and reference to filings made in support of the applications.

   B. Upstream existing use in California may require mapping and quantifying as they are the result of uses under riparian and littoral rights under California law. The total uses are believed to be small, many on intermittant streams, and most are on United States Forest Lands, but a few small diversions are believed to exist on private lands.

Statement is made relating to Watasheamu Reservoir, which is on the Carson River System, and does not affect the Walker River Compact.

Statement is made relating to water quality and failure to address. In the Walker River Compact water quality is addressed specifically as it relates to Webber Reservoir and Reservation direct diversion rights. Title II, Article VIII, A, 4(b).

I thank you sir, and your Committee for the opportunity to testify.

BOLTON F. MINISTER
55 E. Tognoli Lane
Yerington, NV 89447

Mr. TAYLOR. Mr. Minister, I don't have any questions right off hand. We talked to some extent yesterday, and your history on this thing certainly goes back, and I think predates the recollection of most of the people that have been testifying here today.

I did understand or hear that at the time the compact was concluded, there were actually three different versions, one of which would have given the United States a voting representative on the commission. And apparently an election was made to adopt the compact in the form that we see it here today.

Do you have any recollection——

Mr. MINISTER. I have no recollection of that. And to the best of my knowledge, in the 12 years I don't think I ever missed a joint commission meeting.

Mr. TAYLOR. And the way the compact has functioned so far, even though it has not been ratified by the Congress, has there been an Indian representative on the commission to your knowledge?

Mr. MINISTER. There is—California doesn't even have a commission operational right now. As I understand—I have been away from the commission for 12 years. I resigned from the commission when I sold property in the Walker River basin and before I bought additional property. But I understand the compact in Nevada meets occasionally, mainly to determine how they are going to proceed on this, and will we bring it to congressional action, because it was postponed from ever going to congressional action by the agreement of Mr. Laxalt, or Senator Laxalt, and now President Reagan to set up a Pyramid Lake task force that tried to resolve the Indian problems along Pyramid Lake.

Mr. TAYLOR. This was when——

Mr. MINISTER. This was when—relatively I think this was about 1969 or 1970. And for the last year or two that I was on the compact commission, we met possibly once a year just to maintain an organization. The compact had——

Mr. TAYLOR. But there were no representatives from California present——

Mr. MINISTER. Pardon?

Mr. TAYLOR. There were no representatives from California present.

Mr. MINISTER. Not at those meetings. The compact had been finalized and had passed both States.

Mr. TAYLOR. I don't have any further questions at this time.

Ms. BOYLAN. I was trying to follow your percentages that you were doing.

Mr. MINISTER. I think the percentages are very important. Now, 85 to 86 percent of the waters available from all sources on the Walker River are decreed waters, decreed by Federal courts decree C-125. Now, that is the sure water. That is the water that flows almost every year, and in some years some of that doesn't even flow.

Ms. BOYLAN. Well, my question then is, how much of that is allocated to the Walker River Tribe, of the 85 percent that is——

Mr. MINISTER. Of the 85 percent, as determined by the decree?

Ms. BOYLAN. Yes.

Mr. MINISTER. What is it, 26.25 cubic feet per second? That is all the Federal court gave the Indians. Now, that is not the doing of the compact commission. That is not the doing of the Walker River——

Ms. BOYLAN. So you have 15 percent unallocated water, of which——

Mr. MINISTER. There is 15 percent of—relative, 14 to 15 percent, of which 8 to 10 percent is applied for under State law, and is applied and put to use under State authority in California and Nevada.

Ms. BOYLAN. But this 14 or 15 percent is divided between the State of California and the State of Nevada——

Mr. MINISTER. No; the water—I beg your pardon, I interrupted you. Eight to ten percent of this is water that is being used under existing rights in the State of Nevada or the State of California. Existing rights, I shouldn't say that because the Indian rights are part of that 8 to 10 percent. The Indian rights to store water in Webber Reservoir, and the right given by compact in 9,450 acre-feet are a part of that 8 to 10 percent. And note, that is the water that we called existing use. It is already—all but the Indian water—is under a State permit or a State right as the riparian rights exist in California.

There is 5 percent that is allocated as "unused water." Five percent. You see, we are not talking about very much when it comes to compact. We are talking about relationships between States.

I know that at one time you were saying you were going to ask everyone well, what do you gain, what do you lose? I think that we should address ourselves, if we don't have a compact, what does the State of Nevada lose? The State of Nevada loses freedom from the restriction right now that—you understand that the Legislature of the State of California told the attorney general of California, by legislation, to sue in the Supreme Court of the United States for an equitable apportionment of the waters of Walker River if, at anytime, Nevada tried to develop—any interest in Nevada tried to develop downstream storage. If they developed upstream storage in conjunction with California that would be all right. But supposedly the apportionment of waters between California and Nevada would have to be determined by that process of developing the upstream storage.

If we lose the compact, we will certainly be in the Supreme Court for apportionment of the waters. If we lose the compact, California has no recognition of the Webber Reservoir right. There is no right on file under State law—it would have to be adjudicated by a court under the claim of Federal right, as would the 9,450 acre-feet of water that we have given by compact. We would lose that, the State of Nevada would.

And we would lose a great deal of the amity that has come about just by the process of negotiating and settling these matters with California. We were in a bad State to begin with.

Ms. **Boylan**. Thank you.

Mr. **Taylor**. Mr. Minister, I think if we have further questions we are going to have to get back to you. Do any of the rest of you have a statement you would like to make?

Mr. **Arrascada**. Mr. Taylor, I will be very brief. You have my written statement and I will summarize just as much as I possibly can. The compact does several things that I think are a distinct advantage insofar as the tribe is concerned.

First of all, there is no existing decree or right to the storage of water on Webber Reservoir, which contains approximately 13,000 acre-feet. The compact verifies that right. And unlike any other water decree that we have, it does not tie that water right to any specific ground. They can use it anyway they want to.

The compact, in addition to that, verifies court decree C-125, the original litigation on the stream system. And under that court decree they are entitled to 26.25 cubic feet per second, which figures out to about 9,450 acre-feet of water. Now, that was the original litigation that they participated in. And a final judicial decision was reached in that litigation.

The compact, in addition to that, gives them, with a 1933 priorities, some 9,400 acre-feet of water. And in accordance with their own statement submitted to this body, they will be able to irrigate an additional 7,000 acres. It is my belief, after looking at this very, very closely, that they have far more to gain by the compact than opposing it.

I wish to submit a copy of the legislative history that was submitted to the Senate way back in 1936 regarding additional lands that were set aside to them of 170,000 acres, in which it was indicated by the then Secretary of the Interior Harold Ickes, that the land being set aside to them at that time was land that was, if you please, a desert grazing type land, where you have 100 to 150 acres of ground available for 1 cow for 1 year. That gives you some idea of the low quality of that land.

I think that if they were to go back and try to, under Winters right doctrine, to establish a water right, they would be limited to the purposes for which the land was set aside, the representations made by the Secretary of the Interior way back in March 26, 1936.

I think you also may have issues and questions regarding collateral estoppel because the litigation that settled their water rights under C-125 was in the process, in the appeal process and pending at that time.

These folks that I represent, these ranchers, hundreds of them on the stream system, have relied upon the Federal court decree, have relied upon the Homestead Act, and have relied upon other acts of the Government that have provided them with their livelihood through their blood and their sweat.

I don't say that the compact will cure all litigation, because it certainly will not. Under C-125, any rancher—it doesn't have to be the—Indians, it can be the gentleman here to my right, Mr. Minister. He can say you are not administering the stream properly, we want to go back into court to see what is going on. They have that right and have always had that right. The compact doesn't take care of any of that.

All the compact does, if you please, is to take care of that small percentage of water that Mr. Minister has indicated, and divide that between the State of California and the State of Nevada, I think insofar as——

Mr. TAYLOR. You have 15 percent of the water as undecreed by a court order. And out of that 15 percent, the State of Nevada gets 65 percent and the State of California 35 percent.

Mr. ARRASCADA. No; out of that 15 percent existing uses that have been grànted by the State of California and State of Nevada take approximately 8 percent?

Mr. MINISTER. Eight to 10 percent.

Mr. ARRASCADA. Eight to 10 percent. So the amount that we're talking about, that is the subject of all of this, is only about 5 or 6 percent of the water. Not very much water at all for all that we are going through here.

Insofar as Walker Lake is concerned, the compact is not going to detrimentally affect Walker Lake. If anything, it is going to provide Walker Lake with additional water because of the additional rights that the Indians are going to acquire by reason of the compact. Whatever fate is going to befall that lake, I don't think anybody could really prevent. But this, I think, will help their lake.

So, if you have any questions, I would be happy to address myself to it. I do know one thing I did not bring up, and that is in C-125 there is some reference to dams. Many of the dams referred to therein, the permits to build those dams, have been canceled; the Revelon, the Strosnyder, and some of the others, and there is only one outstanding permit at this time. And if the compact is approved, there may be some question as to even the viability of that particular project at this time.

Mr. TAYLOR. Well, I would just like to note that this record is going to stay open at least 2 weeks, as Senator Andrews indicated this morning. And you are certainly free to supplement your testimony anyway you want. We also will have followup questions.

Mr. ARRASCADA. I would be happy to come back anytime.

Mr. **Taylor**. Well, we may be inviting you. Mr. Weishaupt, do you have any——

Mr. **Weishaupt**. Mr. Taylor, I don't have any oral comments, but I would like to ask that you include my statement in the record.

Mr. **Taylor**. It will be included as if spoken in full at this point.

[Mr. Weishaupt's statement follows:]

TESTIMONY OF JIM WEISHAUPT

MANAGER-WALKER RIVER IRRIGATION DISTRICT

CHIEF DEPUTY WATER COMMISSIONER-U. S. WATER COMMISSIONERS

Mr. Chairman, my name is JIM WEISHAUPT, Manager of the Walker River Irrigation District and I also represent the U. S. Board of Water Commissioners as Chief Deputy Water Commissioner. Walker River Irriation District is a quasi-political subdivision of the State of Nevada, formed on April 14, 1919. Walker River Irrigation District was organized under the Nevada Irrigation District Act. The Walker River Irrigation District now is administered in accordance with Ch. 539 of the Nevada Revised Statutes. Its major purpose is to provide irrigation water and drainage for the project. It is governed by five directors elected at large by the qualified water users. Walker River Irrigation District operates from an office in Yerington, Nevada.

Within the boundaries of the Walker River Irrigation District, there are 246,000 acres of land including those with water rights and those without; those with water rights comprise a total of approximately 79,000 acres. Of the 79,000 acres of water right land, 49,100 are located in Mason Valley, 21,100 in Smith Valley, and 8,900 are located along the riparian lands of the East Fork of the Walker River. Included in these acreage totals are water right lands having decree water, lands with decree water and supplemental storage, and lands with no decree but having straight storage allocations. All of the above mentioned lands are allotted supplemental state certificated water allowing from all sources 4.2 and 3.2 acre feet per acre on bench grounds and bottom grounds respectively.

The major crops produced within the district are primarily alfalfa hay, sold to the dairies in California, a large number of row crops, mainly onions and high altitude garlic seed, and small grains and pasture that sustain the cattle industry.

DESCRIPTION OF THE WATERSHED

The Walker River is a non-navigable interstate stream. It consists of two main branches, East and West Walker, which are fed by small streams rising high on the Eastern slopes of the Sierra Nevada Mountains in Mono and Alpine Counties, California.

The West Walker, in the course of its descent, flows through Levitt and Pickle Meadows, two high mountain valleys, thence through a canyon with practically no cultivated area, thence Northerly and Northeastwardly through Antelope Valley into the State of Nevada, thence through Smith Valley to the head of Mason Valley where it joins with the East Walker River. The principal streams forming the East Walker River combine in Bridgeport Meadows, which is a large area devoted to raising wild grass and pasture at an elevation of 6,500 feet above sea level. The East Walker flows thence Northerly and Northeastwardly through canyons and sparsely populated valleys to Masion Valley where it unites with the West Walker River and forms the main Walker River. This River flows Northerly and Northeastwardly, descends through Mason Valley to near the town of Wabuska, where it turns abruptly to the Southeast and flows through the Walker River Indian Reservation where it terminates at Walker Lake, a distance of some 110 miles away from the point of origin.

The Walker River watershed is steep, rising above the valley floor from 6,000 feet in elevation to 12,500 feet within a 2 to 4 mile distance, as the crow flies. The drainage basins are very small in size; 550 square miles on the West Walker and 360 square miles on the East Walker. The spring runoff pattern is quick, erratic and undependable. The melt-out or spring thaw may only last for 17 to 20 days, usually beginning around the 10th of May and ending by June 5th on the West Fork and the 10th of June on the East Fork.

Thus the quantity of water is ample at times, under normal conditions, but much of it is unavailable! The reservoir capacities are not sufficient to control the erratic patterns of the runoff. The erratic flows continue past the reservoir into the river below.

Two reservoirs were constructed by the Walker River Irrigation District for the purpose of conserving the surplus water of the Walker River, Bridgeport Reservoir situated on the East Walker River below the town of Bridgeport, having a capacity of 42,000 acre feet and Topaz Reservoir situated on the West Walker.below Antelope Valley having a capacity of 59,000 acre feet.

STREAM FLOWS

Once the water flows out of the Toiyabe National Forest near Yosemite National Park the East Walker River will yield an average annual flow of 106,500 acre feet per year; the West Walker River will yield an average annual flow of 203,600 acre feet for a total annual inflow of 310,100 acre feet. There is an annual quantity of water averaging 285,000 acre feet available to

Walker River Irrigation District. The estimated annual return flow and contribution from tributaries is thought to be 77,000 acre feet. Thus the total water available for agricultural use flowing into the district is 362,400 acre feet.

However, the average annual inflow to the Walker River Paiute Indian Reservation below the District at Wabuska is 126,100 acre feet. Of the 126,100 acre feet, some 28% or 35,300 acre feet of water, is diverted onto the agricultural lands of the Walker River Paiute Tribe at Schurz, leaving an average annual inflow into Walker Lake of 90,800 acre feet.

The net average surface water supply to the Walker River Irrigation District is 240,000 acre feet, some 49,200 acre feet less than the present full duty of water and water rights allow for. Using average flows to make that determination, there is apparently enough water to meet existing water rights during normal or above normal water year. Unfortunately, the availability of this water due to current lack of adequate storage does not coincide with crop water requirements. Secondly, to provide enough water during drought years, which 3 out of 10 are on the Walker River system, the water users in the 1960's installed numerous state certificated deep water agricultural wells. During these drought years it is believed that up to 100,000 acre feet of water may be pumped from the underground supply to supplement the inadequate surface water supply. In a conservation effort, many of the water users have converted from flood, border irrigation practices, to the use of sprinklers which is compatible with the well installations.

The Walker River Paiute Tribe has this same available opportunity to make use of the available ground water supply. As of 1978 thereis reported, 5.5 million acre feat of usable ground water existing in the Schurz subarea. It is documented that pumping tenfold of the 1978 rate will not appreciably lower the groundwater levels.

HISTORY OF IRRIGATED ACREAGES AND THE DECLINE OF WALKER LAKE

Following the construction of Topaz and Bridgport Reservoirs in the early 1920's additional lands were issued water rights by the Walker River Irrigation District up to 128,600 acres according to the 1934 assessment roll. Realizing, during the depression years that the available water supply and type of marginal lands under cultivation would not sustain a viable agricultural industry, the district allowed lands to be turned back for taxes. The District's outstanding bonds were reorganized. To date, the present assessment roll is 78,800 acres, some 49,000 acres less than in 1934. The impact of this is reflected in the lessening of the average annual decline of Walker Lake. Between the years 1910 and 1950 the average annual decline was 1.875 vertical feet per year. From 1950 projected through 1985 the average annual decline was .91 vertical feet. This is consistent with documented diversions to the Walker River Paiute Tribe, the expected 4.5 acre feet per year of evaporation from the surface of the lake in Nevada at elevations less than 4,000 feet above sea level and the U. S. Geological Survey records of flows into the reservation.

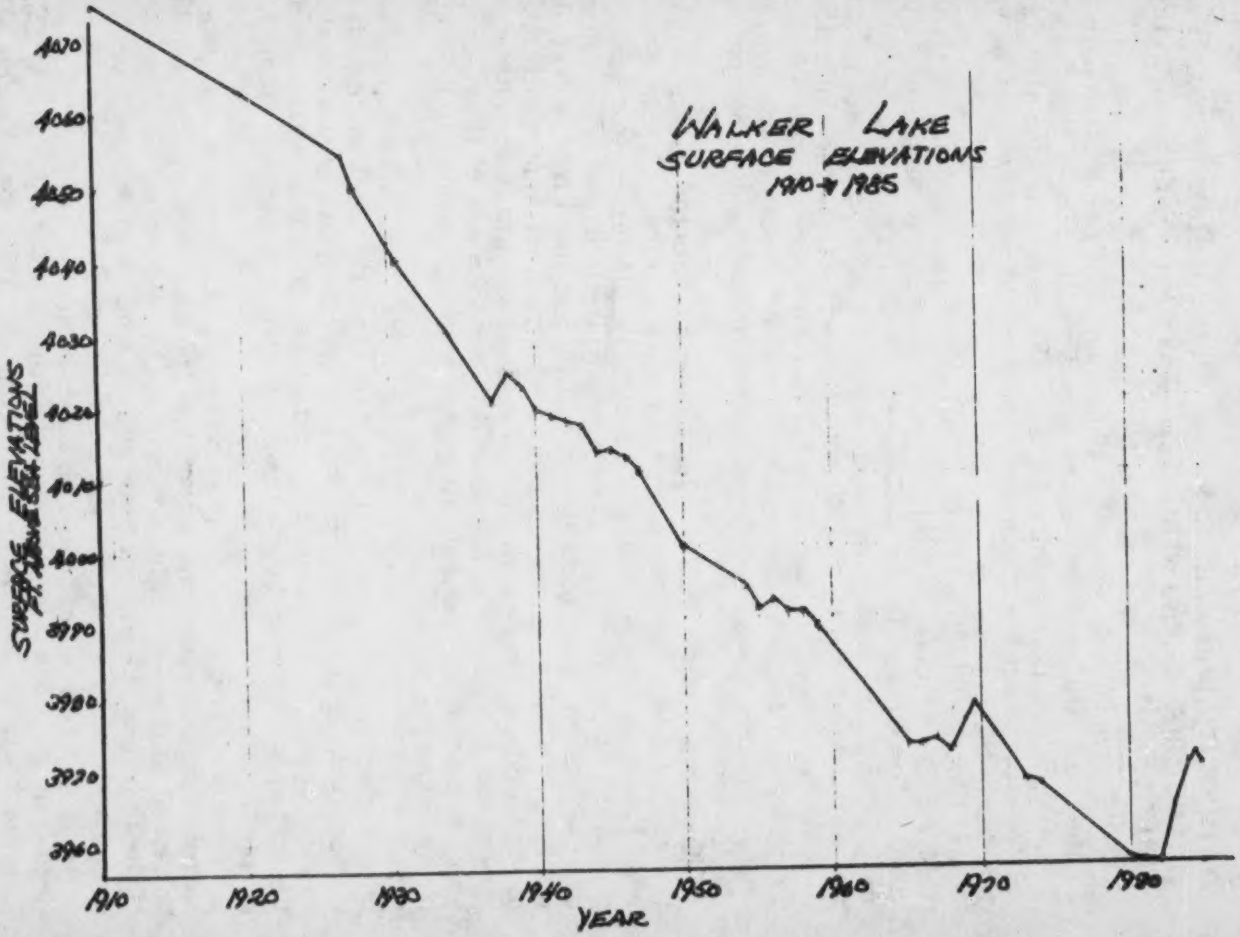
Concluding from a Water Master's perspective of the entire river system, the Walker River is in balance and needs the California-Nevada Interstate Compact to continue this balance.

All interests were represented fairly and equitably. With the Compact ratified, the remaining excess waters of the Walker River may now be allocated and confirmed for use. Regardless of the respective claims that are made at this hearing, a more favorable settlement could not be accomplished.

I have enjoyed the opportunity to testify before your committee.

Thank you,

JIM WEISHAUPT
P. O. Box 820
Yerington, NV 89447


WALKER LAKE
SURFACE ELEVATIONS
1910 - 1985
SURFACE ELEVATIONS
FT. ABOVE SEA LEVEL
4070
4060
4050
4040
4030
4020
4010
4000
3990
3980
3970
3960
1910
1920
1930
1940
1950
1960
1970
1980
YEAR

Mr. TAYLOR. Mr. Firth or Mr. Gray.

STATEMENT OF ROBERT E. FIRTH, VICE PRESIDENT, BOARD OF DIRECTORS, CARSON-TRUCKEE WATER CONSERVANCY DISTRICT, RENO, NV

Mr. FIRTH. Thank you, Mr. Chairman. My name is Robert E. Firth. I am vice president of the board of directors of the Carson-Truckee Water Conservancy District. We have provided the committee with a written statement, and I would ask that that be entered into the record.

Mr. TAYLOR. It will be made a part of the record as if fully read.

Mr. FIRTH. Thank you. I only wish to make a couple of statements. The Carson-Truckee Conservancy District was established in 1958 with the sole purpose of being the contracting agency for the water developed by the Washoe Project Act. As the committee may know, none of the Carson River facilities in the Washoe Project Act have ever been constructed. So, certainly the district was never able to contract for any water from any development on the Carson River.

The Truckee River facilities have been constructed, and of course the main facility for repayment type contracts would be the Stampede Reservoir. Since 1958, the district has attempted to negotiate a repayment contract with the Bureau of Reclamation. There have been several versions of that contract agreed upon by the Nevada interests, and also agreed upon by the regional office of the Bureau of Reclamation. Those contracts have been submitted to the Secretary of the Interior, who has saw fit to not sign any of them, probably because of the pending litigation that has been going on for many, many years.

The Washoe project facilities; namely Stampede, were approved by an election that was held within the six counties that the Carson-Truckee District represents. I might say, two of those counties did oppose the Washoe project facilities, but four of the counties did approve them. So we certainly had an indication from the people that they wanted those projects.

The intent, of course, of Stampede was to be a repayment, reimbursable project where the majority of the construction costs would be repaid to the Government over a 40- or 50-year period. Because of the failure of the district to be able to acquire a contract, none of that money has ever been reimbursed to the Federal Government.

We finally had to resort to litigation because of our lack of ability to acquire a contract. We joined with Sierra Pacific Power Co. and the State of Nevada in the Stampede litigation. As you all know, we were unsuccessful there. And of course we have participated in all of the negotiation sessions that have been held subsequent to losing that litigation.

So, we feel the passage of this act is certainly a method for the Government to get some reimbursement for the project which they have never done to date, and also will allow the Carson-Truckee District to enter into a contract for the development of whatever water that may be produced by that project. So, we would ask your support in the passage of this bill.

Thank you.

Mr. TAYLOR. Thank you.

[Mr. Firth's prepared statement, on behalf of the Carson-Truckee Water Conservancy District, follows:]

TESTIMONY OF

ROBERT FIRTH

Vice Chairman

CARSON-TRUCKEE WATER CONSERVANCY DISTRICT

Mr. Chairman, my name is Robert Firth and I represent the Carson-Truckee Water Conservancy District. I am vice chairman of the Board of Directors of the District and I hold my position on the Board of Directors as a designee by my employer, the Sierra Pacific Power Company. I have been a member of the Board of Directors for six years. I am presenty manager of water engineering and planning for Sierra and have been greatly involved in Truckee River water issues for the past 25 years.

In 1951 a Water Users Committee was formed and became known as the Truckee River Water Users Committee. This committee's purpose was to improve the water conditions on the Truckee and Carson Rivers by eliminating as far as economically feasible the deficiency in water supply on both rivers and to endeavor to reduce flooding. The principle objectives of the committee were to:

1. Develop additional storage to supplement the existing storage in the Truckee River basin in order to eliminate water deficiencies which ocurred during drought years and to firm the existing water supply. Such storage was to serve irrigation in the Truckee Meadows and the Newlands Project, to reduce flooding along the river and for hydroelectric power.

2. Develop storage on the Carson River basin for the benefit of Carson Valley lands and other lands along the Carson River which had no significant storage and which had less than a 60% water supply during dry years. This area had a water

shortage practically every year. The proposed storage on the Carson River is to provide flood protection, improved sanitation conditions, hydroelectric power and development of fish and wildlife resources, in addition to the proposed irrigation benefits.

3. Provide drainage in the Carson Valley and Truckee Meadows.

Between 1950 and 1955 the Water Users Committee developed plans for the proposed development of a joint Truckee River and Carson River project. During this time, at the urging of the Water Users Committee, the Bureau became involved in planning and sponsoring the project as a reclamation project to be built by the Bureau with money from the Reclamation Fund. The Committee and the Bureau worked together on a cooperative basis to formulate the plan that ultimately was submitted to Congress in 1955 as House Document 181.

Numerous meetings were held with various members of the Bureau, the Department of the Interior, and members of Congress for the purpose of working out details and problems relating to the project and coordinating the plans of the Bureau and the Committee. House Document 181 was supported by all and became the Washoe Project Act 43, U.S.C. 614.

The principal purpose of the Washoe Project was to provide up-stream storage on the Truckee and Carson Rivers to be carried over for relief during drought periods that periodically occurred in the drainage area of both rivers. The importance of flood control became evident as a second serious flood occurred just prior to Christmas in 1955. The 1955 flood resulted in a flow of 23,000 cfs through the Reno-Sparks area. In addition, water covered much of the land in the Glendale area which is east of the City of Sparks due to a restriction in river flow at Vista (a point east of Sparks on the Truckee River) such that the amount of water that passed through the channel was limited.

The Washoe Project was authorized by Congress August 1, 1956. The major elements of the Project were two dams and reservoirs: Stampede Dam and Reservoir on the Little Truckee, and Watasheauma Dam and Reservoir on the Carson River, with hydroelectric plants at each site. In the Truckee basin two locations were selected primarily for flood protection and are known as Prosser Creek and Martis Creek which are tributaries to the Truckee River.

When the project works were completed, a special water district would operate and maintain the facilities. The surplus water stored in these reservoirs was to be sold by such Districts to various water users. The money received from the sale of water and revenue from the power generation was to be used to reimburse the United States for construction of the facilities. A portion of the costs of the project for flood control was to be non-reimbursable. Fish and wildlife facilities were minor and incidental to the main purposes. The Washoe Project limited the wildlife and fishery expenditures to two million dollars.

Following the approval of the Washoe Project by Congress in 1956, the Water Users Committee, in response to the request of the Bureau, received legislation enabling the establishment during the 1957 Session with the adoption of the Water Conservancy Act (Nevada Revised Statute 541.030). This District would directly benefit residents of the state by providing adequate supplies of water for domestic, municipal and industrial use.

On January 9, 1958, the Committee caused the formation of the District following the 1957 legislative act. The District was formed under the Act on January 27, 1958. The first meeting of the District was held in the First Judicial Court in Carson City, Nevada.

The main objective of this group was to negotiate a repayment contract with the United States for the construction of the Washoe Project. This District has existed continuously since its formation in 1958.

The District meets on a monthly basis. The main objective at present is to contract and be responsible for the distribution of the water supply from Stampede Reservoir for the public's benefit as set forth in the Washoe Project Act.

As the District was being formed, those involved in political subdivisions within the boundaries of the District were aware of the projected anticipated population growth; and it appeared that additional supplies of water would be needed for municipal and industrial usage. The original feasibility report of 1954 prepared by the Bureau of Reclamation did not specifically state that municipal and industrial water uses would be involved. It was concluded that the Bureau of Reclamation be requested to study the problem and make provisions for municipal and industrial uses. This request was also made to the Secretary of the Interior, U.S. Senators, George Malone and Alan Bible and Congressman Walter Baring. This request was initiated by the Board of Directors of the Carson-Truckee Water Conservation District on August 9, 1958. The Project Engineer and Project Manager for the Bureau of Reclamation were present at the meeting and indicated the study would be made.

Shortly after the above meeting, the California-Nevada Interstate Compact Commission advised that available water should be allocated to future domestic and municipal and industrial uses, rather than irrigation.

The District late in 1958 decided to poll the various communities in the District to ascertain the extent of the need. The following resulted:

Reno-Sparks	10,000 AF
Minden-Gardnerville	1,500 "
Carson City	4,000 "
North American	1,100 "
Curtis Wright	5,000 "
	21,600 AF

In 1959-1960, the reefs in the Truckee River east of Vista were removed, partially to provide a 6,000 cfs channel capacity. Following a public hearing in December 1959, it was planned to request a flood control dam or Martis Creek, a tributary of the Truckee River, with a storage capacity of 15,000 AF. In 1960, Prosser dam was to be built, for flood control purposes.

Carson-Truckee Water Conservancy District advised Vernon J. Hansen, then the Bureau of Reclamation Project Manager, 24,600 AF of water annually should be reserved for municipal and industrial use. The District made the original request in January 1959, and it required 15 months before the Bureau responded to that request.

The original plan was to build Watasheamu Reservoir first. The plan was to be completed in 1959, with construction possible during 1961-62. The definite plan report for the entire project was to be completed in late 1961. It was necessary to form the Carson Sub Conservancy District and to obtain contracts for water from users on the Upper Carson River.

In May 1961 the Carson-Truckee Water Conservancy District received information that 24,600 AF of water would be set aside for municipal and industrial uses. This reply instigated repayment contract provisions relating to the municipal and industrial water.

In June of 1962 the Bureau of Reclamation in furnishing a draft for the repayment contract, stated that the Secretary could arbitrarily reduce any water available to the District by using such water for fishery purposes. The District would not sign an open ended agreement which would allow the United States to divert the Carson-Truckee Water Conservancy District's municipal and industrial water for fish and wildlife purposes. The Carson-Truckee Water Conservancy District wanted allocations between the two uses made prior to execution of the repayment contract.

The Watasheamu project was increased in size at the request of the Carson-Truckee Water Conservancy District; however, the lack of support from local interests led to a failure in reaching necessary agreements.

Prosser flood control project was completed and placed in operation in 1962.

The Stampede situation remained unchanged during 1963. The Carson-Truckee Water Conservancy District was assured that municipal and industrial water would be allocated under the Washoe Project Act and the Water Supply Act of 1958. Further, the Carson-Truckee Water Conservancy District would continue to assume the responsibilities for operation and maintenance of the project works and the repayment for all reimbursable costs. The Carson-Truckee Water Conservancy District gave the Bureau of Reclamation this assurance, and the Bureau of Reclamation confirmed that it would proceed to construct the project without further authorization.

The Carson-Truckee Water Conservancy District approved the repayment contract on June 10, 1963, and the Bureau of Reclamation approved the construction September 6, 1963. The contract was sent to the Secretary of the Interior. The construction cost was set at $45 million, with a maximum repayment set at $22-1/2 million.

In view of the position taken by Bureaus within the Department of Interior, the contract was not ratified by the Department. A task force was organized in 1964. The matter was voted on by the electors within the boundaries of the Truckee-Carson Water Conservancy District on November 3, 1964. The project was approved. Two counties opposed the contract, Churchill and Storey.

The contract called for the Truckee-Carson Water Conservancy District, upon completion of construction of the project, to operate and maintain the project works, except for certain non-reimbursable fish facilities (Marble Bluff Dam and Fishery).

The fish problem caused a review of the dam size, and it was recommended that the original capacity of 125,000 AF be increased to 225,000 AF for fish flows and for a request by California for a reservation of 6,000 acre feet for municipal and industrial uses.

The Task Force issued a report in October 1964 which allocated 6,300 AF annually from Stampede for fishery purposes, primarily to operate a fishway at Pyramid Lake.

The Task Force recommendations were:

16,900 AF for Nevada municipal and industrial use
6,300 AF for Fishery
6,000 for California municipal and industrial use

The Carson-Truckee Water Conservancy District approved this modification.

Following notification of the November 1964 election, the Bureau of Reclamation advised it would complete the final definite plan report on the basis of the Task Force Report.

The repayment contract as amended was approved on February 19, 1965. July 1965 the Carson-Truckee Water Conservancy District met with the Bureau of Reclamation to review a contract draft of July 1965. Negotiations continued and on September 9, 1965, a contract dated August 18, 1965, was adopted. It was indicated that the contract would be approved by the Secretary of the Interior in about six weeks. This has not occurred as of this date.

The Carson-Truckee Water Conservancy District was informed by the Regional Director for the Bureau of Reclamation that Stampede would be operated in accordance with the Task Force recommendations. The statement was, "It is our intention, also to incorporate into the Stampede division portion of the contract the recommendations of the Task Force as such recommendations may relate to the Washoe Project contract and provide for repayment of municipal and industrial water under the authority of the Water Supply Act of 1958.

"Further, it is our intention, in response to the local municipal and industrial needs, urgent flood control requirements, and general interest expressed in the area, to construct the Stampede division in advance of the Watasheamu Division. Plans are being developed for Stampede Division with a gross capacity of Stampede Reservoir of 225,000 AF. Of the total, 22,000 AF of storage will be used for joint use for flood control and conservation in accordance with criteria proposed by the Corps of Engineers."

A committee was formed to set forth operating criteria and procedures for the control of the Truckee and Carson Rivers. The Task Force report was to be a guideline.

Stampede bids were opened October 4, 1966. A contract was awarded in November to the firm of Heintz and Kizie. The dam and other elements on the Truckee were completed in July 1970. The Forest Service was informed that following construction the operation plan would provide a minimum pool of 123,000 AF and Stampede Reservoir would not be used for flow control except for flood control emergencies. The Stampede facility has never been operated as stated to the Carson-Truckee Water Conservancy District. The Interior completely eliminated Stampede's municipal and industrial function and has operated Stampede to support fishery experiments only.

During 1970 the Martis Creek dam was contracted for. This facility was completed in 1972.

From 1973 to date the Carson-Truckee Water Conservancy District has endeavored to have the Bureau of Reclamation operate facilities as set forth in the original authorization of the Washoe Project.

It would be of some interest to know that the original authorization allocated 2 million dollars for fish propagation. One facility, Marble Bluff Dam and Fishery, was constructed between December 28, 1973, and October 3, 1975, at a cost of 4.6 million. This does not include any costs of fish hatcheries built at the Pyramid Lake reservation.

In an effort to resolve the many problems that have arisen as the result of the foregoing negotiations and agreements the Carson-Truckee Water Conservancy District in concert with the Sierra Pacific Power Company commenced legal action in an effort to determine the municipal and industrial water use rights for the areas represented by them. Suqh litigation was unsuccessful.

Subsequent to the conclusion of the litigation, all parties involved with respect to Truckee River water use again sat down at the negotiating table in an effort to resolve the many issues which had been ongoing for a period of an excess of thirty (30) years.

It is the understanding of the Board of Directors of the Carson-Truckee Water Conservancy District that the agreements reached as the result of the most recent negotiations is the predicate for the introduction of the bill before this committee today.

We believe that this bill will put to rest many of the issues which have been the result of agreements, litigation and threatened future litigation.

The Carson-Truckee Water Conservancy District also believes that the ratification of the California-Nevada Interstate Compact was absolutely necessary to the finalization of any agreement which may be reached among the parties. The basic reason for this being that it quantifies the water to which the State of Nevada is entitled under the allocation granted by the California-Nevada Interstate Compact Commission. That all negotiated matters will fit within the confines of said compact. It further precludes the institution of an interstate suit between California and Nevada for the equitable allocation of the waters of the three-stream systems and Lake Tahoe and as such saves the taxpayers of both states tremendous amount in litigation costs which would be inherent in such litigation.

Mr. **Taylor**. Mr. Gray, do you have any comment?

STATEMENT OF LESLIE B. GRAY, REPRESENTING THE WASHOE COUNTY WATER CONSERVATION DISTRICT, RENO, NV

Mr. **Gray**. My name is Leslie Gray, and I am counsel for the Washoe County Water Conservation District. I have submitted a statement, which I presume will become part of the record.

Mr. **Taylor**. It will, at that.

Mr. **Gray**. I do not care to expand on the statement, except to say that in every area, in my opinion, it is important that this legislation be expeditiously handled and adopted. I have been involved in a considerable portion of the recent litigation. It is vital that this litigation stop, and that these settlement areas be achieved.

It is vital that the compact be adopted and not impaired or requiring legislative treatment by both the States. And in my final judgment, I cannot for the life of me understand why the tribe now opposes this legislation even in the form which it is. For the past 4 years we have been involved meeting frequently in Sacramento, in Reno, to put this together. And they have been involved at every meeting.

Even though at the outset they said they would thankfully be present, but not be involved. Now they are involved as my attached letter shows. So, it is vital and important that this legislation go forward.

[Mr. Gray's prepared statement, on behalf of the Washoe County Water Conservation District, follows:]

PREPARED STATEMENT OF LESLIE B. GRAY, REPRESENTING THE WASHOE COUNTY WATER CONSERVATION DISTRICT, RENO, NV

MR. CHAIRMAN, my name is Leslie B. Gray, representing the WASHOE COUNTY WATER CONSERVATION DISTRICT, Reno, Nevada. I have what the insurance companies call "The Home Office", 3540 Wedekind Road, Sparks, Nevada 89431.

The District was and is a major party to the action which culminated in the ORR DITCH Decree of 1944 which was confirmed by the Supreme Court of the United States in 1983, NEVADA v. UNITED STATES et al. 463 U.S. 110.

The District is a quasi-public corporation organized pursuant to Nevada Irrigation statutes primarily to operate Boca Dam, distribute water and through assessments to reimburse the Government for the construction of Boca. Through separate contract it operates Stampede, Prosser and Martis dams. All of the operations are under the supervision and control of the Water Master who is an officer of the Federal Court.

The District is a major party in the negotiations in this proposed settlement legislation which commenced under the auspices of the Secretary of the Interior in September, 1981.

By way of background, my predecessor firm, Price and Merrill of Reno, has represented the District starting in the 1920's. Robert M. Price was a principal negotiator of the Truckee River Agreement of 1935 which led to the 1944 ORR DITCH Decree and the building of Boca for upstream storage. I joined the firm in 1940 and Charles M. Merrill (now a Ninth Circuit retired/active Federal Judge) presented the proposed decree in Federal District Court in 1944. We have represented the District to the present.

Particularly since 1945 I have helped the Indians in northern Nevada. I helped them establish the Inter-Tribal Council, all without fee. In 1964 I testified in their behalf before a special task force established by the Secretary of the Interior to study the feasibility of allocating Washoe Project water for the maintenance of fish flows for Pyramid Lake.

I mention the foregoing because I have always tried to maintain a balanced perspective in regard to the Indians and what has been termed "The Water Wars". I hasten to add that in all my experience I have yet to see a balanced presentation of our particular water problems with the possible exception of Samuel G. Houghton's excellent book, "A Trace of Desert Water/ THE GREAT BASIN STORY," (Arthur H. Clark Company, 1976). I hope to attach a copy of my reference to the book in a letter dated July 10, 1982 to a statement later in this testimony.

To understand the issues and this settlement the factual situation must be placed in historical context. The people and the Government of the United States have treated the Indians shamefully with inconsistent and almost schizophrenic policies. In this particular situation it has to be added that the conflicting policies are of a well-meaning government. In the latter 1800s the rush was on for gold and the development of the arid west. The overriding policy was to reclaim the desert and make farmers out of settlers AND the Indians at Pyramid. One of the great ironies of these juggernaut policies, is that the first reclamation project, the Newlands, Truckee-Carson Irrigation District, was sketched out by the greatest friend the Indians ever had in Government, John Wesley Powell.

The project was founded with magnificent good intent accompanied by multiple error and massive miscalculation. See Townley, The Orr Ditch Case, 1913-1944 (October 1980, Desert Research Institute-University of Nevada System). An excellent recital of these facts and the subsequent events is to be found in NEVADA v. UNITED STATES, et al, 463 U.S. 110. supra. Attached are the first nine pages.

Since the 1960's, the Government particularly, began to seriously address the water problems in northern Nevada. After 13 years of negotiation the California-Nevada Compact was adopted by California in 1970 and by Nevada in 1971 and was initially first introduced in Congress March 15, 1971 where it has languished for 14 years.

On July 7, 1969 then Governors Reagan and Laxalt with Secretary of the Interior Hickel created Pyramid Lake Task Force to investigate and recommend possible solutions for the preservation of Pyramid Lake "taking into consideration of both the needs" of Pyramid "and of water users on the stream system." Their report was transmitted on December 31, 1971.

Since the 1970's none of the interested parties were able to get anywhere. In effect the Tribe was told to sue. There was an attempt to invoke the original jurisdiction of the Supreme Court with the ruling that the case should be started in Nevada. A Washington judgment known as the Gesell decree against the Secretary of the Interior proved to be virtually useless.

Upon the commencement of the 1973 action by the Government, intervened in by the Tribe, I consistently and frequently urged all parties to sit down and settle the issues much as they purport to be settled in this legislation before you now. Untold millions have been spent in wasteful litigation and we are today where we started the most recent proliferation of litigation.

Our great regret is that so much time, money and effort has been spent to arrive where we could have been had we buckled down to settlement a decade ago.

In July, 1982, after these negotiations had started, counsel for the Tribe wrote to the Secretary of the Interior and the Nevada Congressional delegation indicating almost for the first time that the Tribe would participate in the negotiations, that they could probably be successful, but that a veto on any proposal was reserved to the Tribe. I answered that letter with a statement that I agreed with everything he said, that we thought that a general compromise could be achieved but that under no circumstances did I believe that any party had any right to reserve a veto power over a settlement (See letter dated July 30, 1982, attached).

That is our thinking today. We feel that with some minor modifications this proposed settlement should be enacted by the Congress. We feel that the proposed legislation should be carefully monitored from the standpoint of effect, that is, has Pyramid Lake been stabilized, are the fish indeed endangered or threatened and from the standpoint of budgetary limits.

In regard to the latter, it must be noted that the Tribe in 1973 or thereafter received a settlement of $8 million for its loss of water (See page 24 of Opinion, footnote attached). Capital improvements at Pyramid have approximated $100 million and the annual budget from the Government for the Pyramid Lake

Indian Tribal Enterprise (PLITE) approached $500,000 a year at the time of the trial in the case cited above.

In the case cited the Court stated that the "Tribe's remedy is against the Government, not against third parties. As we have noted earlier, the Tribe has already taken advantage of that remedy."

Mr. Justice Brennan's concurring opinion emphasizes that the real remedy is against the Government.

Here, we are doing more than looking to the Federal Government alone. The State of Nevada is contributing $8 million. Everyone concerned, the irrigators in the Truckee Meadows, the municipal and industrial users in the area and the farmers in Fallon are all sacrificing, as they have sacrificed for years, to see to it that the best system can benefit everyone.

In summary, it is our position that this proposed settlement legislation, with minor changes, should be pressed to immediate enactment.

Respectfully submitted,

Leslie B. Gray
LESLIE B. GRAY
Counsel for WASHOE COUNTY
WATER CONSERVATION DISTRICT

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 81–2245, 81–2276 AND 82–38

NEVADA, PETITIONER
81–2245 *v.*
UNITED STATES ET AL.

TRUCKEE-CARSON IRRIGATION DISTRICT, PETITIONER
81–2276 *v.*
UNITED STATES ET AL.

PYRAMID LAKE PAIUTE TRIBE OF INDIANS, PETITIONER
82–38 *v.*
TRUCKEE-CARSON IRRIGATION DISTRICT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 24, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

In 1913 the United States sued to adjudicate water rights to the Truckee River for the benefit of the Pyramid Lake Indian Reservation and the planned Newlands Reclamation Project. Thirty-one years later, in 1944, the United States District Court for the District of Nevada entered a final decree in the case pursuant to a settlement agreement. In 1973 the United States filed the present action in the same court on behalf of the Pyramid Lake Indian Reservation seeking additional water rights to the Truckee River. The issue thus presented is whether the Government may partially undo the 1944 decree, or whether principles of *res judicata* prevent it, and the intervenor Pyramid Lake Paiute Tribe, from litigating this claim on the merits.

I

Nevada has, on the average, less precipitation than any other State in the Union. Except for drainage in the southeastern part of the State into the Colorado River, and drainage in the northern part of the State into the Columbia River, the rivers that flow in Nevada generally disappear into "sinks." Department of Agriculture Yearbook, Climate and Man (1941). The present litigation relates to water rights in the Truckee River, one of the three principal rivers flowing through west central Nevada. It rises in the High Sierra in Placer County, California, flows into and out of Lake Tahoe, and thence down the eastern slope of the Sierra Nevada mountains. It flows through Reno, Nevada, and after a course of some 120 miles debouches into Pyramid Lake, which has no outlet.

It has been said that Pyramid Lake is "widely considered the most beautiful desert lake in North America [and that its] fishery [has] brought it worldwide fame. A species of cutthroat trout . . . grew to world record size in the desert lake and attracted anglers from throughout the world." S. Wheeler, The Desert Lake 90–92 (1967). The first recorded sighting of Pyramid Lake by non-Indians occurred in January of 1844 when Captain John C. Fremont and his party camped nearby. In his journal Captain Fremont reported that the Lake "broke upon our eyes like the ocean" and was "set like a gem in the mountains." 1 The Expeditions of John Charles Fremont 604–605 (1970). Commenting upon the fishery, as well as the Pyramid Lake Indians that his party was camping with, Captain Fremont wrote:

"An Indian brought in a large fish to trade, which we had

> the inexpressible satisfaction to find was a salmon trout; we gathered round him eagerly. The Indians were amused with our delight, and immediately brought in numbers; so that the camp was soon stocked. Their flavor was excellent—superior, in fact, to that of any fish I have ever known. They were of extraordinary size—about as large as the Columbia river salmon—generally from two to four feet in length." *Id.*, at 609.

When first viewed by Captain Fremont in early 1844, Pyramid Lake was some 50 miles long and 12 miles wide. Since that time the surface area of the Lake has been reduced by about 20,000 acres.

The origins of the cases before us are found in two historical events involving the Federal Government in this part of the country. First, in 1859 the Department of the Interior set aside nearly half a million acres in what is now western Nevada as a reservation for the area's Paiute Indians. In 1874 President Ulysses S. Grant by executive order confirmed the withdrawal as the Pyramid Lake Indian Reservation. The Reservation includes Pyramid Lake, the land surrounding it, the lower reaches of the Truckee River, and the bottom land alongside the lower Truckee.

Then, with the passage of the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, the Federal Government was designated to play a more prominent role in the development of the West. That Act directed the Secretary of the Interior to withdraw from public entry arid lands in specified western States, reclaim the lands through irrigation projects, and then to restore the lands to entry pursuant to the homestead laws and certain conditions imposed by the Act itself. Accordingly, the Secretary withdrew from the public domain approximately 200,000 acres in western Nevada, which ultimately became the Newlands Reclamation Project. The Project was designed to irrigate a substantial area in the vicinity of Fallon, Nevada, with waters from both the

Truckee and the Carson Rivers.

The Carson River, like the Truckee, rises on the eastern slope of the High Sierra in Alpine County, California, and flows north and northeast over a course of about 170 miles, finally disappearing into Carson sink. The Newlands Project accomplished the diversion of water from the Truckee River to the Carson River by constructing the Derby Diversion Dam on the Truckee River, and constructing the Truckee Canal through which the diverted waters would be transported to the Carson River. Experience in the early days of the Project indicated the necessity of a storage reservoir on the Carson River, and accordingly Lahontan Dam was constructed and Lahontan Reservoir behind that Dam was created. The combined waters of the Truckee and Carson Rivers impounded in Lahontan Reservoir are distributed for irrigation and related uses on downstream lands by means of lateral canals within the Newlands Reclamation Project.

Before the works contemplated by the Project went into operation, a number of private landowners had established rights to water in the Truckee River under Nevada law. The Government also asserted on behalf of the Indians of the Pyramid Lake Indian Reservation a reserved right under the so-called "implied-reservation-of-water" doctrine set forth in *Winters* v. *United States*, 207 U. S. 564 (1908).[1] The United States therefore filed a complaint in the United States District Court for the District of Nevada in March, 1913, commencing what became known as the *Orr Ditch* litigation. The Government, for the benefit of both the Project and the Pyramid Lake Reservation, asserted a claim to 10,000 cubic feet of water per second for the Project and a claim to 500 cubic feet per second for the Reservation. The complaint named as defendants all water users on the Truckee River in Nevada. The Government expressly sought a final decree quieting title to the rights of all parties.

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[1] In *Winters* v. *United States*, 207 U. S. 564 (1908), this Court construed the agreements creating the Fort Belknap Indian Reservation. While the agreements did not purport to claim any water rights from the Milk River, this Court held that the Federal Government had impliedly reserved a right to the amount of river water necessary to effectuate the purposes of the agreements. Since then we have recognized and applied the *Winters* doctrine in other contexts, see *United States* v. *New Mexico*, 438 U. S. 696, 698 (1978), *Cappaert* v. *United States*, 426 U. S. 128, 138 (1976), including when interpreting an executive order that created an Indian reservation, see *Arizona* v. *California*, 373 U. S. 546, 598 (1963).

Following several years of hearings, a Special Master issued a report and proposed decree in July of 1924. The report awarded the Reservation an 1859 priority date in the Truckee River for 58.7 second feet and 12,412 acre feet annually of water to irrigate 3,130 acres of Reservation lands.[2] The Project was awarded a 1902 priority date for 1,500 cubic feet per second to irrigate, to the extent the amount would allow,[3] 232,800 acres of land within the Newlands Reclamation Project. In February of 1926 the District Court entered a temporary restraining order declaring the water rights as proposed by the Special Master. "One of the primary purposes" for entering a temporary order was to allow for an experimental period during which modifications of the declared rights could be made if necessary. App. to Nevada Petn. for Cert. a186.

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[2] Congress had passed a provision in 1904 authorizing the Secretary of Interior to include in the Newlands Reclamation Project lands located in the Pyramid Lake Indian Reservation. Act of April 21, 1904, ch. 1402, § 26, 33 Stat. 225. If such lands were included, each individual Indian living on the Reservation was to be allotted five acres of the reclaimed land. The Special Master's report, and the District Court's temporary order, provided additional water rights for the Reservation in the event the allotments were made. Congress abandoned the plan, however, before it was ever implemented. Act of June 18, 1934, ch. 576, § 1, 48 Stat. 984. See 649 F. 2d 1286, 1294 (CA9 1981).

[3] Notwithstanding the Project's 1902 priority, it was awarded far less water than the Government had claimed. While it was recognized that the 1,500 cubic feet per second, together with the water obtained from the Carson River, would not irrigate the Project's entire 232,800 acres, in the subsequent settlement negotiations the Truckee-Carson Irrigation District, then representing the interest of the Project, agreed to this lesser amount. The Court of Appeals noted that "there has never been irrigated more than about 65,000 acres of land in the Project." 649 F. 2d 1286, 1292 n. 1 (CA9 1981).

Not until almost ten years later, in the midst of a prolonged drought, was interest stimulated in concluding the *Orr Ditch* litigation. Settlement negotiations were commenced in 1934 by the principal organizational defendants in the case, Washoe County Water Conservation District and the Sierra Pacific Power Co., and the representatives of the Project and the Reservation. The United States still acted on behalf of the Reservation's interests, but the Project was now under the management of the Truckee-Carson Irrigation District (TCID).[4] The defendants and TCID proposed an agreement along the lines of the temporary restraining order. The United States objected, demanding an increase in the Reservation's water rights to allow for the irrigation of an additional 2,745 acres of Reservation land. After some resistance, the Government's demand was accepted and a settlement agreement was signed on July 1, 1935. The District Court entered a final decree adopting the agreement on September 8, 1944.[5] No appeal was taken. Thus, 31 years after its inception the *Orr Ditch* litigation came to a close.

On December 21, 1973 the Government instituted the action below seeking additional rights to the Truckee River for the Pyramid Lake Indian Reservation; the Pyramid Lake

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[4] The newly formed Truckee-Carson Irrigation District had assumed operational control of the Newlands Project pursuant to a contract entered into with the Government on December 18, 1926.

[5] The nine year gap between the agreement and the final decree was attributable to a provision in the agreement that it would be submitted to the District Court only after completion of the new upstream storage reservoir.

Paiute Tribe was permitted to intervene in support of the United States. The Government named as defendants all persons presently claiming water rights to the Truckee River and its tributaries in Nevada. The defendants include the defendants in the *Orr Ditch* litigation and their successors, approximately 3800 individual farmers that own land in the Newlands Reclamation Project, and the Truckee-Carson Irrigation District. The District Court certified the Project farmers as a class and directed TCID to represent their interests.[6]

In its complaint the Government purported not to dispute the rights decreed in the *Orr Ditch* case. Instead, it alleged that *Orr Ditch* determined only the Reservation's right to "water for irrigation," App. to Nevada Petn. for Cert. a157, not the claim now being asserted for "sufficient waters from the Truckee River [for] the maintenance and preservation of Pyramid Lake, [and for] the maintenance of the lower reaches of the Truckee River as a natural spawning ground for fish," App. to Nevada Petn. for Cert. a155–156. The complaint further averred that in establishing the Reservation the United States had intended that the Pyramid Lake fishery be maintained. Since the additional water now being claimed is allegedly necessary for that purpose, the Government alleged that the executive order creating the Reservation must have impliedly reserved a right to this water.[7]

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[6] The Government did not name as defendants in its original complaint the Project landowners. Citing the absence of these claimants, the named defendants moved to dismiss for failure to join indispensable parties. Subsequently, the Government moved to amend its complaint so as to join the Project landowners as a class. After a hearing, the motion to amend was granted. App. 193–204.

[7] Between 1920 and 1940 the surface area of Pyramid Lake was reduced by about 20,000 acres. The decline resulted in a delta forming at the mouth of the Truckee that prevented the fish indigenous to the Lake, the Lahontan cutthroat trout and the cui-ui, from reaching their spawning grounds in the Truckee River, resulting in the near extinction of both spe-

The defendants below asserted *res judicata* as an affirmative defense, saying that the United States and the Tribe were precluded by the *Orr Ditch* decree from litigating this claim. Following a separate trial on this issue, the District Court sustained the defense and dismissed the complaint in its entirety.

In its decision, the District Court first determined that all of the parties in this action were parties, or in privity with parties, in the *Orr Ditch* case. The District Court then found that the *Orr Ditch* litigation "was intended by all concerned, lawyers, litigants and judges, as a general all inclusive water adjudication suit which sought to adjudicate all rights and claims in and to the waters of the Truckee . . . and required all parties to fully set up their respective water right claims." App. to Nevada Petn. for Cert. a185. The court determined that in accordance with this general intention, the United States had intended in *Orr Ditch* "to assert as large a water right as possible for the Indian reservation." App. to Nevada Petn. for Cert. a185. The District Court further explained:

> "[T]he cause of action sought to be asserted in this proceeding by the plaintiff and the Tribe is the same quiet title cause of action asserted by the plaintiff in *Orr Ditch* for and on behalf of the Tribe and its members, that is, a *Winters* implied and reserved water right for the benefit of the reservation, with a priority date of December 8,

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cies. Efforts to restore the fishery have occurred since that time. Pyramid Lake has been stabilized for several years and, augmented by passage of the Washoe Project Act of 1956, ch. 809, § 4, 70 Stat. 777, the Lake is being restocked with cutthroat trout and cui-ui. Fish hatcheries operated by both the State of Nevada and the United States have been one source for replenishing the Lake. In 1976 the Marble Bluff Dam and Fishway was completed, enabling the fish to bypass the delta to their spawning grounds in the Truckee. Both the District Court and Court of Appeals observed that "these restoration efforts 'appear to justify optimism for eventual success.'" 649 F. 2d 1286, 1294 (CA9 1981). See App. to Nevada Petn. for Cert. a184.

> 1859, from a single source of water supply, i. e., the Truckee Watershed. The plaintiff and the Tribe may not litigate several different types of water use claims, all arising under the *Winters* doctrine and all derived from the same water source in a piece-meal fashion. There was but one cause of action in equity to quiet title in plaintiff and the Tribe based upon the *Winters* reserved right theory." App. to Nevada Petn. for Cert. a188.

The Court of Appeals for the Ninth Circuit affirmed in part and reversed in part. 649 F. 2d 1286 (CA9 1981), *modified*, 666 F. 2d 351 (CA9 1982). The Court of Appeals agreed that the causes of action asserted in *Orr Ditch* and the instant litigation are the same and that the United States and the Tribe cannot relitigate this cause of action with the *Orr Ditch* defendants or subsequent appropriators of the Truckee River. But, the Court of Appeals found that the *Orr Ditch* decree did not conclude the dispute between the Tribe and the owners of Newlands Project lands. The court said that litigants are not to be bound by a prior judgment unless they were adversaries under the earlier pleadings or unless the specific issue in dispute was actually litigated in the earlier case and the court found that neither exception applied here.

The Court of Appeals conceded that "[a] strict adversity requirement does not necessarily fit the realities of water adjudications." 649 F. 2d, at 1309. Nevertheless, the court found that since neither the Tribe nor the Project landowners were parties in *Orr Ditch* but instead were both represented by the United States, and since their interests may have conflicted in that proceeding, the court would not find that the Government had intended to bind these nonparties *inter se* absent a specific statement of adversity in the pleadings. We granted certiorari in the cases challenging the Court of Appeals' decision, —— U. S. —— (1982), and we now affirm in part and reverse in part.

LESLIE B. GRAY
ATTORNEY AT LAW
3540 WEDEKIND ROAD
SPARKS, NEVADA 89431

TELEPHONE
(702) 359-4153

July 30, 1982

Honorable James G. Watt
Secretary of the Interior
18th & "C" Streets N.W.
Washington, DC 20240

Honorable Howard W. Cannon
United States Senator
259 Russell Senate Office Building
Washington, DC 20510

Honorable Paul Laxalt
United States Senator
315 Russell Senate Office Building
Washington, DC 20510

Honorable James D. Santini
United States Congreeman
2429 Rayburn House Office Building
Washington, DC 20515

RE: Settlement negotiations of all lawsuits and controversies on Truckee/Carson Rivers

Gentlemen:

Regarding the foregoing and specifically Mr. Pelcyger's letter to you dated July 20th, on behalf of the Washoe County Water Conservation District, we are constrained to look with favor on practically everything said therein with the exception of some erroneous statements as to ultimate law and facts.

With no intention of re-hashing these century old issues, we refer simply to the conditions sought to be imposed, which no party has a right to inflict on other parties; but we hasten to add that with genuine compromise wherein all parties give a little and maybe a lot, the "conditions" can be fully met.

Samuel G. Houghton spent a lifetime thinking about and eventually writing about our overall subject. His book, "A Trace of Desert Water/THE GREAT BASIN STORY," (Arthur H. Clark Company, 1976) I commend to all concerned. The great and succinct sum-up contained in pages 97 to 100, commencing:

> "The rivalry for water in the contiguous Carson and Truckee basins has been keen and often bitter since the mid-19th century ... "

and at page 98:

> "The matter seems likely to drag on in the courts for many years, probably to be settled by compromises that please no one."

And next paragraph:

> "The transparent fact is that existing sources are inadequate to supply the needs which are increasing with each passing year."

Finally, last paragraph, page 100:

> "Yet the ultimate solution may lie in massive regional water importation. The wealthy megalopolis of southern California could afford it and western Nevada might exact a small transit fee in acre feet."

Back to Mr. Pelcyger. In his fourth ground on his page 4, Mr. Pelcyger states: "The Tribe is distrustful of the Interior Department...." Tell us about it. We have been wailing for years about Interior, Reclamation, Indian claims, the Federal Judiciary (except those who rule in our favor) and the real culprit, the Justice Department, which have been collectively guilt-ridden and schizophrenic in this modern era to an extent unbelievable if audits and sworn statements didn't attest to the money and effort lavished on Tribal Enterprises. But all this should be water into and out of Marble Bluff, Stampede and Lahontan too.

Forget it and be glad. If a hundred million was expended in northern Nevada for, say 1,000 Indians at best, and we are able to make-do, then let us go forward, compromise and live together in peace and harmony.

Please contact us if there are any questions or suggestions.

Sincerely,

LESLIE B. GRAY

P.S. See next page.
LBG/mn
cc: All persons on Bureau of Reclamation mailing list for settlement discussions of Truckee-Carson River lawsuits.

Hon. R.N. Broadbent
Hon. Kenneth Smith
David Houston
Harvey R. Nelson, Jr.
Richard Jeffries
Hon. Carol E. Dinkins
James Clear, Esq.

Brenda Washington, Esq.
Lawrence Jensen, Esq.
George Crossland
James Johnson, Esq.
Ronald Robie
Rachael Bluestone
Frederick Girard, Esq.

P.S. We are authorized to state that Ed Pine, the manager of the Truckee-Carson Conservancy District, has read this letter and concurs in it.

I should add, too, that we all recognize Pyramid Lake is a national treasure, and our compromise should include every effort to preserve it, if that is humanly possible.

ance & Trust Co., 265 U. S. 472, 482–486 (1924). We also hold that the Tribe, whose interests were represented in *Orr Ditch* by the United States, can be bound by the *Orr Ditch* decree.[14] This Court left little room for an argument to the contrary in *Heckman* v. *United States*, 224 U. S. 413 (1912), where it plainly said that "it could not, consistently with any principle, be tolerated that, after the United States on behalf of its wards had invoked the jurisdiction of its courts . . . these wards should themselves be permitted to relitigate the question." *Id.*, at 446. See also Restatement (Second) of Judgments § 41(d) (1982). We reaffirm that principle now.[15]

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[14] We, of course, do not pass judgment on the quality of representation that the Tribe received. In 1951 the Tribe sued the Government before the Indian Claims Commission for damages, basing its claim of liabilty on the Tribe's receipt of less water for the fishery than it was entitled to. *Northern Paiute Tribe* v. *United States*, 30 Ind. Cl. Comm. 210 (1973). In a settlement the Tribe was given $8,000,000 in return for its waiver of further liability on the part of the Untied States.

[15] This Court held in *Hansberry* v. *Lee*, 311 U. S. 32, 44 (1940), that persons vicariously represented in a class action could not be bound by a judgment in the case where the representative parties had interests that impermissibly conflicted with those of persons represented. See also Restatement (Second) of Judgments § 42(d) (1982). The Tribe seeks to take advantage of this ruling, arguing that the Government's primary interest in *Orr Ditch* was to obtain water rights for the Newlands Reclamation Project and that by definition any water rights given to the Tribe would conflict with that interest. We reject this contention.

We have already said that the Government stands in a different position than a private fiduciary where Congress has decreed that the Government must represent more than one interest. When the Government performs such duties it does not by that reason alone compromise its obligation to any of the interests involved.

The Justice Department's involvement in *Orr Ditch* began with a letter from the Secretary of the Interior to the Attorney General requesting that a single suit be brought by the Government for a determination "of all water rights in Lake Tahoe and Truckee River above the intake of the Truckee-Carson Reclamation project." App. 263. A Special Assistant United States Attorney assigned to the matter was apparently the first to recognize that the Government should in the same suit seek to establish the

Mr. **Taylor**. Well, it is my understanding that out of these meetings recently, the prospects of coming to some settlement are evaluated as being better than they were 6 months ago. So, hopefully this is leading somewhere.

I thank you all very much. I am sure we will be back in touch with you.

Mr. **Arrascada**. Thank you, Mr. Taylor.

Mr. **Taylor**. Our next panel is Mr. Elvin Willie, Jr., chairman of the Walker River Paiute Tribe; accompanied by Wayne Johnson, the business manager; and Scott McElroy, attorney for the tribe.

Mr. **Willie**. My name is Elvin Willie, Jr. I am the chairman of the Walker River Paiute Tribe. I would like to request that our detailed comments and our engineering study be made a part of the record of this testimony.

Mr. **Taylor**. They will be made a part of the record.

STATEMENT OF ELVIN WILLIE, JR., CHAIRMAN, WALKER RIVER PAIUTE TRIBE, SCHURZ, NV, ACCOMPANIED BY WAYNE JOHNSON, BUSINESS MANAGER, WALKER RIVER PAIUTE TRIBE; AND SCOTT B. McELROY, ATTORNEY, NATIVE AMERICAN RIGHTS FUND, BOULDER, CO

Mr. **Willie**. The tribe is opposed to title II of the proposed legislation. On the Walker River, the compact does not appear to simply allocate water between California and Nevada. Instead, it establishes a comprehensive scheme governing the use of water from the Walker River. That scheme is not based on State or Federal law, but apparently on the drafter's view of the water user's needs in the Walker River basin.

Neither the tribe nor the Bureau of Indian Affairs played a role in drafting the compact. And since this has been made a point of contention, as brought up by the Senator, I would like to refer the committee to one of the exhibits that we submitted in our detailed testimony, under exhibit A, where the same allegations or these same concerns were made back then, in 1970, over 15 years ago. We are not raising anything new.

And this particular letter that I'm referring to is signed off by a George Hedden, who was the Federal representative at the time and took part in some of the meetings. He raised the same questions then, and I would just like to make that a part of the record, as far as my oral testimony. On page 4 of his letter he does state the same views that we're stating at the present time.

As a result of that lack of involvement by the tribe, the compact drastically limits the tribe's ability to obtain the water supplies needed to develop its reservation. We are worried that the compact will constitute a legislative quantification of the tribe's water rights. It is our understanding that Congress will normally take such a step only when there is a consensus among the affected water users. Here there is no consensus.

In the recent process there have been no consultations with the tribe at all, especially within the last 4 years when they have been discussing with the Pyramid Lake Tribe over the Settlement Act. Walker River and its issues regarding the compact have not gone through the lengthy process of negotiations that have taken place with the Pyramid Lake Tribe in the last 4 years.

The tribe is very disappointed that its concerns were ignored in the 4 years of discussions, which resulted in the proposed legislation. We do not know why the State and Federal Government decided to proceed without us. Certainly Federal concern over the ratification of the compact is not new. As a part of our detailed summary, we have listed some of the concerns of the past Secretaries of Interior, Udall and Andrus, and they are contained in exhibits B and C.

Since the compact's initial proposal in 1969, they have consistently stated opposition to the compact, in part because of its adverse effect on the Walker River Reservation. None of the issues have changed since the time of their opposition. In fact, over the years there are many other issues that have grown. The scrutiny with which prior administrations have reviewed the compact is entirely appropriate, given the impact that the compact will have on tribal interests.

Under our Constitution of the United States, those interests have always been of national importance and not simply left to the States. The objections to the compact expressed in the past are well founded. The compact provides the tribe with rights to 13,000 acre-feet of storage right and 9,450 acre-feet of direct flow right, each with a 1933 priority date in addition to court decreed rights.

The rights granted by the compact would only irrigate approximately 7,000 acres. Not additional acres, but total acres altogether. That would provide less than 6 acres of irrigated land for each tribal member. The tribal needs are far greater.

In 1906 the United States promised to provide a water supply for 10,000 acres of allotments in return for cessation of a large part of our reservation. That commitment has never been met. In 1936, after the close of evidence in the court case, and after the time period governed by the decree, approximately 167,000 acres of land were restored to the reservation. The tribe's reserve rights for these lands have never been judicially determined.

To date, our engineers have identified in the restored portion of the reservation at least 10,000 acres of land that would satisfy the current legal and factual tests for a reserve water right.

Stated briefly, the rights provided to the tribe by the compact are plainly insufficient. They do not fulfill the Government's earlier commitment to provide water for our allotments and they do not provide water for the lands restored in 1936.

In contrast to the minimal allocations provided the tribe, the compact is very generous to upstream, non-Indian water users. In fact, it purports to confirm all upstream uses, whether or not these uses are in compliance with applicable law. Yet, as the compact acknowledges, an amount of such uses was not known in 1968. Who knows how much land has been put to use in the intervening years.

In sum, the compact provisions for the allocation of the water on the Walker River turn the Winters doctrine upside down. It is the non-Indians who receive a firm future supply of water sufficient to meet their projected needs. The tribe, in contrast, is limited to the uses it was making in the 1920's and 1930's.

Other problems exist with the compact as well. A vast amount of jurisdiction is vested in the compact commission. Yet, there is no tribal representation on the commission, and the Federal representative is not entitled to vote. These shortcomings are a direct reflection of the lack of consultation with the tribe and those in the Department of the Interior in charge of protecting tribal interests at the time the compact was drafted. That initial ommission has never been corrected.

Finally, the compact was drafted in 1968. During the intervening years other issues have come to the forefront. Although water quality is of increasing concern and has spurred a heated debate between the two States, the compact makes no meaningful attempt to address that topic.

Since 1968, the Endangered Species Act has been enacted. Walker Lake is home to the Lahonton cutthroat which, as a threatened species, is entitled to protection under that legislation. But the compact imposes a management scheme which pays no deference to this fact.

The problems on the Walker River are substantial and require resolution. However, the hasty enactment of a poorly conceived and out dated scheme for governing the Walker River will not solve these problems. A lasting solution can only be achieved through consensus reached in discussion with all affected parties. To date, this has not occurred.

For these reasons, the Walker River Paiute Tribe urges the elimination of title II from the Pyramid Lake settlement legislation. Thank you for the opportunity to state our views, and either myself or our attorney or our business manager will be happy to answer any questions that you may have.

Mr. TAYLOR. Thank you very much.

[Mr. Willie's prepared statement, on behalf of the Walker River Paiute Tribe, the referred to comments on S. 1558 and H.R. 3213, and the engineering study referred to, follow:]

STATEMENT OF ELVIN WILLIE, JR.
CHAIRMAN, WALKER RIVER PAIUTE TRIBE
ON S. 1558 AND H.R. 3213

MY NAME IS ELVIN WILLIE, JR.; I AM THE CHAIRMAN OF THE WALKER RIVER PAIUTE TRIBE. BEFORE BRIEFLY RELATING THE TRIBE'S CONCERNS WITH THE PRESENT LEGISLATION, I WOULD LIKE TO REQUEST THAT OUR DETAILED COMMENTS AND ENGINEERING SUMMARY BE MADE A PART OF THE RECORD OF THIS HEARING.

THE WALKER RIVER RESERVATION WAS CREATED IN 1859 AND IS LOCATED IN SOUTH CENTRAL NEVADA. THE WALKER RIVER RUNS THROUGH THE RESERVATION FOR 25 MILES AND IS OUR PRIMARY SOURCE OF WATER. AGRICULTURE, AS FIRST RECOGNIZED IN 1859, IS OUR ONLY HOPE FOR DEVELOPING A LASTING ECONOMIC BASE ON THE RESERVATION. TO ACHIEVE THAT GOAL, WE NEED ADDITIONAL WATER SUPPLIES.

THE TRIBE IS STRONGLY OPPOSED TO TITLE II OF THE PROPOSED LEGISLATION. TITLE II, AS YOU KNOW, CALLS FOR THE RATIFICATION OF THE CALIFORNIA-NEVADA COMPACT WHICH WOULD CONTROL WATER USE FROM THE WALKER AND CARSON RIVERS AS WELL AS THE TRUCKEE RIVER AND THE LAKE TAHOE BASIN. ON THE WALKER RIVER, THE COMPACT DOES NOT SIMPLY ALLOCATE WATER BETWEEN CALIFORNIA AND NEVADA. INSTEAD, IT ESTABLISHES A COMPREHENSIVE SCHEME GOVERNING THE USE OF WATER FROM THE WALKER RIVER. THAT SCHEME IS NOT BASED ON STATE OR FEDERAL LAW BUT APPARENTLY ON

THE DRAFTERS' VIEW OF THE WATER USERS' NEEDS IN THE WALKER RIVER BASIN. NEITHER THE TRIBE NOR THE BUREAU OF INDIAN AFFAIRS, PLAYED A ROLE IN DRAFTING THE COMPACT. AS A RESULT, THE COMPACT DRASTICALLY LIMITS THE TRIBE'S ABILITY TO OBTAIN THE WATER SUPPLIES NEEDED TO DEVELOP ITS RESERVATION.

IN SHORT, THE COMPACT WILL CONSTITUTE A LEGISLATIVE QUANTIFICATION OF THE TRIBE'S WATER RIGHTS. IT IS OUR UNDERSTANDING THAT CONGRESS NORMALLY WILL TAKE SUCH A STEP ONLY WHEN THERE IS CONSENSUS AMONG THE AFFECTED WATER USERS. HERE THERE IS NO CONSENSUS. IN THE RECENT PROCESS, THERE HAS BEEN NO CONSULTATION WITH THE TRIBE AT ALL. THE TRIBE IS VERY DISAPPOINTED THAT ITS CONCERNS WERE IGNORED IN THE FOUR YEARS OF DISCUSSION WHICH RESULTED IN THE PROPOSED LEGISLATION. WE DO NOT KNOW WHY THE STATE AND FEDERAL GOVERNMENT DECIDED TO PROCEED WITHOUT US. CERTAINLY, FEDERAL CONCERN OVER RATIFICATION OF THE COMPACT IS NOT NEW. SINCE THE COMPACT'S INITIAL PROPOSAL IN 1969, THE EXECUTIVE BRANCH HAS CONSISTENTLY STATED ITS OPPOSITION TO THE COMPACT, IN PART BECAUSE OF ITS ADVERSE EFFECT ON THE WALKER RIVER RESERVATION. THE SCRUTINY WITH WHICH PRIOR ADMINISTRATIONS HAVE REVIEWED THE COMPACT IS ENTIRELY APPROPRIATE, GIVEN THE IMPACT WHICH THE COMPACT WILL HAVE ON TRIBAL INTERESTS. UNDER OUR CONSTITUTION, THOSE INTERESTS HAVE ALWAYS BEEN OF NATIONAL IMPORTANCE AND NOT SIMPLY LEFT TO THE STATES.

THE OBJECTIONS TO THE COMPACT EXPRESSED IN THE PAST ARE WELL FOUNDED. THE COMPACT PROVIDES THE TRIBE WITH RIGHTS TO 13,000 ACREFEET OF STORAGE RIGHTS AND 9,450 ACREFEET OF DIRECT FLOW RIGHTS, EACH WITH A 1933 PRIORITY DATE. IT IS NOT ENTIRELY CLEAR WHETHER THESE RIGHTS ARE IN ADDITION TO THE RIGHTS AWARDED TO THE UNITED STATES ON BEHALF OF THE TRIBE IN UNITED STATES V. WALKER RIVER IRRIGATION DISTRICT, COMMONLY REFERRED TO AS "C-125" WHERE THE TRIBE WAS AWARDED IRRIGATION RIGHTS OF 26.25 CFS FOR 180 DAYS WITH AN 1859 PRIORITY. THAT WORKS OUT TO ABOUT 9450 ACREFEET.

BUT EVEN IF THE RIGHTS GRANTED BY THE COMPACT ARE IN ADDITION TO THOSE RECOGNIZED IN THE DECREE, THEY WOULD ONLY IRRIGATE APPROXIMATELY 7000 ACRES. THAT WOULD PROVIDE LESS THAN 6 ACRES OF IRRIGATED LAND FOR EACH TRIBAL MEMBER. THE TRIBAL NEEDS ARE FAR GREATER. IN 1906, THE UNITED STATES PROMISED TO PROVIDE A WATER SUPPLY FOR 10,000 ACRES OF ALLOTMENTS IN RETURN FOR THE CESSION OF A LARGE PART OF OUR RESERVATION. THAT COMMITTMENT HAS NOT BEEN MET. IN 1936, AFTER THE CLOSE OF EVIDENCE IN UNITED STATES V. WALKER RIVER IRRIGATION DISTRICT AND AFTER THE TIME PERIOD GOVERNED BY THE DECREE, APPROXIMATELY 167,000 ACRES OF LAND WERE RESTORED TO THE RESERVATION. THE TRIBE'S RESERVED RIGHTS FOR THESE LANDS HAVE NEVER BEEN JUDICIALLY DETERMINED. TO DATE OUR ENGINEERS HAVE IDENTIFIED IN THE RESTORED PORTION OF THE RESERVATION AT LEAST 10,000 ACRES OF LAND WHICH WOULD SATISFY THE CURRENT

LEGAL AND FACTUAL TESTS FOR A RESERVED WATER RIGHT. STATED BRIEFLY, THE RIGHTS PROVIDED TO THE TRIBE BY THE COMPACT ARE PLAINLY INSUFFICIENT. THEY DO NOT FULFILL THE GOVERNMENT'S EARLIER COMMITTMENT TO PROVIDE WATER FOR OUR ALLOTMENTS AND THEY DO NOT PROVIDE WATER FOR THE LANDS RESTORED IN 1936.

IN CONTRAST TO THE MINIMAL ALLOCATIONS PROVIDED THE TRIBE, THE COMPACT IS VERY GENEROUS TO UPSTREAM, NON-INDIAN WATER USERS. IN FACT, IT PURPORTS TO CONFIRM ALL UPSTREAM USES WHETHER OR NOT THOSE USES ARE IN COMPLIANCE WITH APPLICABLE LAW. YET, AS THE COMPACT ACKNOWLEDGES, THE AMOUNT OF SUCH USES WAS NOT KNOWN IN 1968. WHO KNOWS HOW MUCH MORE LAND HAS BEEN PUT TO USE IN THE INTERVENING YEARS? THE COMPACT ALSO PURPORTS TO CONFIRM ALL RIGHTS RECOGNIZED UNDER THE EARLIER DECREE. ALTHOUGH WE WOULD DISAGREE, IT MIGHT BE ARGUED THAT THIS INCLUDES SUBSTANTIAL UPSTREAM STORAGE RIGHTS EVEN THOUGH THE DAMS AND RESERVOIRS HAVE NEVER BEEN BUILT.

IN SUM, THE COMPACT'S PROVISIONS FOR THE ALLOCATION OF THE WATER ON THE WALKER RIVER TURN THE WINTERS DOCTRINE UPSIDE DOWN. IT IS THE NON-INDIANS WHO RECEIVE A FIRM FUTURE SUPPLY OF WATER, SUFFICIENT TO MEET THEIR PROJECTED NEEDS. THE TRIBE, IN CONTRAST, IS LIMITED TO THE USES IT WAS MAKING IN THE 1920'S AND 30'S.

OTHER PROBLEMS EXIST WITH THE COMPACT AS WELL. A VAST AMOUNT OF JURISDICTION IS VESTED IN THE COMPACT COMMISSION. YET THERE IS NO TRIBAL REPRESENTATION ON THE COMMISSION AND THE FEDERAL REPRESENTATIVE IS NOT ENTITLED TO VOTE. THESE

SHORTCOMINGS ARE A DIRECT REFLECTION OF THE LACK OF CONSULTATION WITH THE TRIBE AND THOSE IN DEPARTMENT OF THE INTERIOR CHARGED WITH PROTECTING TRIBAL INTERESTS AT THE TIME THE COMPACT WAS DRAFTED. THAT INITIAL OMISSION HAS NEVER BEEN CORRECTED.

FINALLY, THE COMPACT WAS DRAFTED IN 1968. DURING THE INTERVENING YEARS, OTHER ISSUES HAVE COME TO THE FOREFRONT. ALTHOUGH WATER QUALITY IS OF INCREASING CONCERN AND HAS SPURRED A HEATED DEBATE BETWEEN THE TWO STATES, THE COMPACT MAKES NO MEANINGFUL ATTEMPT TO ADDRESS THAT TOPIC. SINCE 1968 THE ENDANGERED SPECIES ACT HAS BEEN ENACTED. WALKER LAKE IS HOME TO THE LAHONTAN CUTTHROAT TROUT WHICH, AS A THREATENED SPECIES, IS ENTITLED TO PROTECTION UNDER THAT LEGISLATION, BUT THE COMPACT IMPOSES A MANAGEMENT SCHEME WHICH PAYS NO DEFERENCE TO THIS FACT.

THE PROBLEMS ON THE WALKER RIVER ARE SUBSTANTIAL AND REQUIRE RESOLUTION, HOWEVER, THE HASTY ENACTMENT OF A POORLY CONCEIVED AND OUT-DATED SCHEME FOR GOVERNING THE WALKER RIVER WILL NOT SOLVE THESE PROBLEMS. A LASTING SOLUTION CAN ONLY BE ACHIEVED THROUGH CONSENSUS REACHED IN DISCUSSIONS WITH ALL AFFECTED PARTIES. TO DATE THAT HAS NOT OCCURRED.

FOR THESE REASONS, THE WALKER RIVER TRIBE URGES THE ELIMINATION OF TITLE II FROM THE PYRAMID LAKE SETTLEMENT LEGISLATION.

THANK YOU FOR THE OPPORTUNITY TO STATE OUR VIEWS. I WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

COMMENTS OF THE WALKER RIVER PAIUTE TRIBE ON S. 1558 AND H.R. 3213

9 September 1985

Elvin Willie, Jr.
Chairman

Wayne Johnson
Business Manager

WALKER RIVER PAIUTE TRIBE
P.O. Box 220
Schurz, NV 89427

(702) 773-2306

Scott B. McElroy
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302

(303) 447-8760

I. INTRODUCTION

The Walker River Paiute Tribe is strongly opposed to ratification of the California-Nevada Compact. Since the creation of the Walker River Reservation in 1859, the United States has consistently and repeatedly promised that the lands of the Reservation would be developed for agricultural purposes. If implemented, the Compact will be used to frustrate the fulfillment of those past commitments which cannot be satisfied without providing an increased water supply to the Reservation.

The Tribe's objections to the Compact are not new. The Nixon Administration, the Ford Administration, and the Carter Administration all concluded that the Compact does not adequately address the interests of the Walker River Tribe. Despite the long history of concern over the Compact's effect on the Walker River Reservation, no effort was made to address these objections prior to the introduction of S. 1558 and H.R. 3213. Title I of that legislation seeks to resolve the bitter controversy over the use of water on the Truckee River. Title II would ratify the Compact, which will then govern the operation of Lake Tahoe, the Truckee River, the Carson River and the Walker River.

In order to understand the Tribe's objections to the Compact, it is necessary first to examine the history of the Reservation and the prior litigation on the Walker River. Second, regulation of the River under the terms of the Compact must be compared to the existing management. Finally, the unresolved tribal claims to additional water must be considered. Placed in proper context, the validity of the Tribe's objection to the hasty ratification of the Compact is abundantly clear.

II. BACKGROUND OF THE PRESENT LEGISLATION

The underlying intent of the proposed legislation is to end decades of controversy over conflicting rights to the use of water from the Truckee River. Beginning in 1966, the Secretary of the Interior sought with increasing vigor to restore the fishery at Pyramid Lake. See, e.g., 43 CFR, part 418. Those efforts spawned extensive litigation with one case, Nevada v. United States, 463 U.S. 110 (1983), finally being decided by the Supreme Court. Three other cases, United States v. Alpine Land & Reservation Company, 503 F. Supp. 877 (D. Nev. 1980), aff'd 697 F.2d 851 (9th Cir. 1983), intervention granted, cert. denied sub nom Pyramid Lake Paiute Tribe of Indians v. Truckee-Carson Irrigation District, ____U.S.____ (1983), 78 L.Ed.2d 170; Truckee-Carson Irrigation District v. Secretary, 742 F.2d 527 (9th Cir. 1984), cert. denied 53 U.S.L.W. 3867 (June 11, 1985); and Carson-Truckee Water Conservancy District v. Watt, 549 F. Supp. 704 (D. Nev. 1982), 748 F.2d 523 (9th Cir. 1984), cert. denied 53 U.S.L.W. 368 (March 26, 1985), have been finally decided by the Court of Appeals for the Ninth Circuit. Nevertheless, in the absence of a negotiated resolution, the future for the Truckee River remains uncertain, except that the expensive and bitter lawsuits will continue.

Almost since its first day in office, the present Administration, acting principally through the Department of the Interior, has strongly supported the concept of a negotiated solution to the problems on the Truckee River. Over the last 4-1/2 years, the Department has devoted considerable funds and effort to this commendable objective. Even with current budget restraints, Interior has funded the legal and technical expertise which the Pyramid Lake Tribe required to participate in such discussions in a meaningful manner. In summary, Title I of the proposed legislation is the result of a long and lengthy process in which all affected parties--except for the Fallon Paiute Shoshone Tribes--on the Truckee River participated. Our understanding is that the final product represents a result which is endorsed by all the participants in those discussions.

The contrast with Title II is remarkable. Title II would ratify the California-Nevada Compact which affects the Carson and Walker Rivers, as well as the Truckee River. Despite the magnitude of the problems on the Carson and Walker Rivers, there have been no discussions with the water users on the Walker River and only some of the users on the Carson have been consulted. Certainly, there has been no attempt to develop a mutually acceptable solution to the water shortages confronting the users on the Walker River. The legislation, as it affects the Truckee River, represents the resolution of a problem by consensus; as it affects the Walker River, it represents the resolution of a problem by legislative fiat without even the pretense of consultation, let alone consensus.

III. THE WALKER RIVER RESERVATION

The Walker River Indian Reservation was established by a November 29, 1859 letter from the Commissioner of Indian Affairs to the Commissioner of the General Land Office and confirmed by an Executive Order dated March 19, 1874. As initially created, the Reservation contained approximately 320,000 acres.

Pursuant to the Act of May 27, 1902, 32 Stat. 260, the Secretary was directed to allot 20 acres to the head of each family residing on the Reservation and also to reserve land for dwellings or buildings, etc. Under that legislation, the President was to open the remaining Reservation land for settlement with the consent of the Indians of the Reservation. An agreement was reached on July 20, 1906, under which the Indian signatories agreed to the opening of the surplus lands on the Reservation to public entry. Under the terms of the agreement, as demonstrated by surrounding documents and circumstances, water rights were to be secured for all 504 of the 20-acre allotments of irrigable land and an irrigation system built by the federal government. In addition, approximately 38,000 acres of grazing lands, as well as 3,355 acres of timberland, were retained in the Reservation.

The Act of June 22, 1936, 49 Stat. 1806-1807, authorized the Secretary of the Interior to set aside certain lands as an addition to the Reservation. In accordance with that legislation, by Secretarial Order dated September 25, 1936, the Secretary restored to the Reservation 167,460 acres which had previously been relinquished under the 1906 agreement.

The Reservation currently encompasses 323,424 acres of land. At present, approximately 800 people live on the Reservation, of whom about 750 are tribal members. The current tribal roll recognizes about 1,300 people as tribal members. The Reservation's resources are scarce and the Tribe must depend on agricultural development if it is to provide a viable home for its members. Currently, the only substantial private employment on the Reservation is in the area of agriculture. The Tribe is organized under the Indian Reorganization Act, 25 U.S.C. §§ 476, 477, and has been recognized by the Secretary of the Interior as having authority to represent its enrolled members.

IV. THE WALKER RIVER

The Walker River is a non-navigable interstate stream. It has two branches, the West and East Walker, both of which form from numerous small streams arising on the Eastern slopes of the Sierra Nevada Mountains in Mono and Alpine Counties, California. These streams are fed primarily by melting snow pack. As a result, flows are large in spring and early summer and low during the remaining parts of the year. The West Walker provides the primary source of irrigation water for the Antelope Valley in California and Smith and Mason Valleys in Nevada. Topaz Reservoir is located on the West Fork just below Antelope Valley. The East Fork provides irrigation water to land upstream from Mason Valley and to portions of Mason Valley. Bridgeport Reservoir is located on the East Fork. The two forks merge near the head of Mason Valley and provide water for Mason Valley. The River subsequently flows through the Reservation for about 25 miles and empties into Walker Lake. The River provides the primary water supply for the Reservation.

V. EXISTING WATER RIGHTS

In 1924, the United States filed a case in the federal district Court for Nevada entitled United States v. Walker River Irrigation District In Equity No. C-125, seeking to adjudicate the water rights of the Walker River. At that time, the reduced Reservation consisted of approximately 80,000 acres. The United States claimed reserved rights[1/] on behalf of the Tribe for the 10,000 acres of allotments established pursuant to the 1902 Act. The district court issued its decision in 1935, refusing to grant reserved rights to the Tribe, but recognizing appropriative water rights for 2,100 acres of land actually under irrigation at that time. *See* United States v. Walker River Irrigation District, 11 F. Supp. 158 (D. Nev. 1935), 14 F. Supp. 10 (D. Nev. 1935). The

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[1/] The reserved rights doctrine was first recognized in Winters v. United States, 207 U.S. 564 (1908), in which the Supreme Court held that the right to use the waters of the Milk River was impliedly reserved in the agreement establishing the Fort Belknap Reservation in Montana. That decision has been repeatedly upheld by the courts which have confirmed that such rights are intended to meet the present and future needs of the Reservations. *See*, *e.g.*, Arizona v. California, 373 U.S. 546, 597-600 (1963); *see generally* F. Cohen, *Handbook of Federal Indian Law* 575-592 (1982 ed).

court assigned priority dates to the tribal water rights as of the date the water was actually put to use.

The final decree implementing the court's decision was entered on April 15, 1936. That decree, _inter alia_, recognized certain upstream storage rights of the Walker River Irrigation District, even though the storage facilities in question had not yet been built. The decree also recognized extensive appropriative rights for upstream non-Indian water users. A fear of adversely affecting the users upstream had been the motivating factor behind the district court's limiting of the tribal rights. The district court recognized the following quantities of water rights for non-Indians:

Bridgeport Meadows	20,000 acres
East Walker	16,000 acres
Antelope Valley	12,000 acres
Smith Valley	15,000 acres
Mason Valley	48,000 acres
	111,000 acres

United States v. Walker River Irrigation District, 11 F. Supp. at 161.

The decision of the district court that the Reservation was not entitled to a reserved water right was reversed by the Ninth Circuit in 1939. _United States v. Walker River Irrigation District_, 104 F.2d 334 (9th Cir. 1939). The Court of Appeals held that the Tribe had a reserved water right with a priority date of 1859 but adopted the now plainly erroneous conclusion of the lower court that a water supply for the then irrigated 2,100 acres was sufficient to met the needs on the Reservation. Hence, the court did not recognize any rights in addition to the existing uses.[2]

After the decision of the Ninth Circuit, the parties entered into a stipulation under which the Tribe received 26.25 cfs for a 180-day irrigation season with a priority date of November 29, 1859 in order to irrigate 2,100 acres. The stipulation provides that the decree establishes rights for the parties, including the United States, as of April 14, 1936. That provision was added in order to permit the United States to make a subsequent claim for Weber Reservoir, a federally-constructed storage facility on the Reservation. Moreover, because the claims closed as of April 14, 1936, the decree plainly did not address the question of the water rights for the land restored to the Reservation on September 25, 1936, in accordance with the Act of June 22, 1936. Virtually since the entry of the final decree, the Tribe and the Bureau of Indian Affairs have complained that the decision is inconsistent with the reserved rights doctrine in that it only recognized water rights for existing uses and did not provide for the future needs of the Tribe.[3]

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[2] In Arizona v. California, supra, the Supreme Court quantified reserved rights for agricultural purposes by providing sufficient water to irrigate all "practicably irrigable acreage" on the five Reservations on the Lower Colorado River. That test provided water for all acreage on the Reservations which was economically feasible to irrigate, whether or not the land was actually under irrigation at the time of trial. The standard was expressly designed to insure that tribes receive sufficient reserved rights to meet their future needs for water.

The Tribe is now preparing to intervene in United States v. Walker River Irrigation District. The Tribe will seek a reserved right for the land restored in 1936 subsequent to the original presentation of evidence. The Tribe will also seek formal recognition of its right to store water in Weber Reservoir. In addition, the Tribe will seek assurances that the terms of the decree are being enforced against upstream users who have greatly expanded the amount of irrigated acreage since the entry of the decree.

VI. THE CALIFORNIA-NEVADA COMPACT

In 1955, pursuant to Public Law 84-353, the United States granted permission to the States of California and Nevada to negotiate a compact allocating the waters of the Walker, Truckee and Carson Rivers. In 1968, the negotiators proposed a compact which was adopted by the California Legislature in 1970, and the Nevada Legislature in 1971. Since that time, through the four previous administrations, the Executive branch has opposed ratification of the Compact. See Memorandum to Acting Secretary of the Interior from California-Nevada Interstate Compact Committee dated December 11, 1980 (a copy of which is attached as Exhibit A); Letter to Charles Zwick from Stewart Udall dated January 4, 1969 (a copy of which is attached as Exhibit B); Memorandum to Legislative Counsel from Acting Associate Solicitor Indian Affairs dated April 28, 1977 (a copy of which is attached as Exhibit C); Letter to James T. McIntyre from Cecil Andrus dated May 25, 1979 (a copy of which is attached as Exhibit D).[4/] There have been numerous reasons for that opposition. Obviously, the United States has been concerned about the impact of the Compact on the Pyramid Lake Tribe. It has also consistently noted that the interests of the Walker River Tribe were not adequately protected under the Compact. While the United States has addressed these issues on numerous occasions, there has been no attempt to resolve the concerns expressed in connection with the Walker River.

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[3] The district court argued that the Tribe did not need any additional water since the Tribe had not put more land into production over the years. But the reason the Tribe had not developed additional land is apparent from the records of the BIA. Since the Reservation sits at the lower end of the River, upstream users had simply not released enough water to permit additional development on the Reservation.

The Tribe has many objections to the Compact. At present, the Tribe receives in the neighborhood of 20,000 to 25,000 acre-feet of water per year, and irrigates approximately 5,000 acres of land. Under the Compact, the Tribe would

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[4/] These documents demonstrate the longstanding awareness by the Department of the Interior of the problems posed by the Compact. If resolution of the difficulties on the Truckee River were to include ratification of the Compact, there is simply no excuse for the Department of the Interior not having initiated discussions among the water users on the Walker River.

receive approximately 29,000 acre-feet of water annually. That includes (1) the 26.25 cfs with an 1859 priority date established under the terms of C-125, (2) an additional direct flow right of 9,450 acre-feet which has a 1933 priority date, and (3) a storage right for Weber Reservoir of 13,000 acre-feet with a 1933 priority date. The slight increase in tribal rights granted by the Compact is not sufficient to meet the tribal needs. It certainly does not address the question of water rights for the restored lands, nor does it provide sufficient water to irrigate the full 10,000 acres as promised in 1906. Indeed, our engineers advise us that the water supply provided by the Compact will permit the Tribe to irrigate only slightly over 7,000 acres.

If the Compact is ratified, the provisions of Art. VIII A.4.(b), which is expressly made binding on the United States by Art. XXII, will no doubt be raised as a bar to the tribal claims for additional water. Utilization of the Compact to preclude additional tribal claims may subject the United States to substantial monetary liability. See Arizona v. California, supra; Menominee Tribe v. United States, 391 U.S. 404 (1968).

In contrast to the minimal allocations granted the Tribe, the Compact is very generous to the upstream users on the Walker River. First, it confirms all rights granted in United States v. Walker River Irrigation District. Arguably, this includes substantial upstream storage rights with 1926 priority dates on the West and the East Walker Rivers, even though those storage facilities have not been built.[5] In addition, the Compact confirms the right of the Walker River Irrigation District to store water of the East Walker River in Bridgeport Reservoir and to divert up to 57,000 acre-feet of water to storage annually. Moreover, the Compact omits the language in the decree that those diversions are to occur only when "there is in the River a quantity of water in excess of the total amount adjudicated to the parties hereto to the extent of such excess." Similarly, the Compact confirms the right of the District to divert up to 85,000 acre-feet of water annually to storage in Topaz Reservoir without the limiting language of the decree.

Article VIII(4)(a) allocates to each State the "amount of existing diversions and uses of water of the Walker River Basin diverted upstream from Weber Reservoir and not specifically covered in Decree C-125." The Compact further provides that "in making this allocation it is recognized that the amounts of water allocated and the respective priorities are not presently known with certainty." The Compact also states that the date of priority for those rights shall be the date of initiation of use, whether or not those users are entitled to such priorities under applicable law. It appears that substantially more land is now irrigated within the upstream areas than at the time of the adjudication. For example, in its testimony before the Natural Resources Agriculture and Mining Committee of the Nevada State Assembly, the Walker River Irrigation District claimed that 21,100 acres in Smith Valley, as compared to 15,000 at the time of the adjudication, were entitled to water rights. See Prepared Statements of the Walker River Irrigation District before Natural Resources, Agriculture and Mining Committee AB280, dated March 19, 1985. Finally, the Compact allocates unused water 65% to Nevada and 35% to California. In addition, the Compact specifies that unused water cannot be used below the point where the Walker River meets Walker Lake.

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[5] We note, however, that at the time of the original litigation, the Walker River Irrigation District conceded that a long delay in building those facilities would preclude claiming the early priority date for those rights.

The difficulties with the Compact, thus, are enormous. First, it simply does not meet the needs of the Tribe. Second, the Compact purports to confirm upstream storage rights with early priority dates, even though those storage facilities have never been built. Moreover, the Compact appears to confirm existing upstream uses, the amount of which is not even known.[6] In sum, the Compact's provisions for the allocation of the water on the Walker River turn the Winters doctrine upside down. It is the non-Indians who receive a firm future supply of water sufficient to meet their projected needs. The Tribe, in contrast, is limited to the uses it was making in the 1920's and 1930's.

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[6] Presumably, that recognition of existing uses is only binding on Nevada and California and not on intrastate questions of who is entitled to that water. Nevertheless, it certainly gives a presumption of validity to those users now using water in violation of applicable law.

Other problems exist with the Compact as well. A vast amount of jurisdiction is vested in the Compact Commission. For example, it is the Compact Commission which will determine water availability for Watasheamu Reservoir, an authorized but never built component of the Washoe Project. Act of August 1, 1957, 43 U.S.C. § 614a. Yet there is no tribal representation on the Commission and the federal representative is not entitled to vote. These shortcomings are a direct reflection of the lack of consultation with the Tribe and those in the Department of the Interior charged with protecting tribal interests at the time the Compact was drafted. That initial omission has never been corrected.

Finally, the Compact was drafted in 1968. During the intervening years, other issues have come to the forefront. Although water quality is of increasing concern and has spurred a heated debate between the two states, the Compact makes no meaningful attempt to address that topic. _See_ _The Truckee River: Just How Dirty Is It?_ Reno Gazette Journal, Sunday, August 11, 1985 (a copy of which is attached as Exhibit E). So too, since 1968 the Endangered Species Act, 16 U.S.C. § 1531 _et seq._ has been enacted. Walker Lake is home to the Lahontan Cutthroat Trout which, as a threatened species, is entitled to protection under that legislation, but the Compact imposes a management scheme which pays no deference to this fact. Recent newspaper articles focus attention on disputes over recent attempts by Sierra Pacific Power Company to export water from

California. See Legal Battles Seen Over Sierra Pacific Acquisition Plan, Reno Gazette Journal, August 4, 1985 (a copy of which is attached as Exhibit F). Again, this topic is not addressed by the Compact. As far as we are aware, there has been no effort even to identify problems or matters of concern which have surfaced since 1968.

VII. CONCLUSION

The Walker River Tribe urges that Title II be dropped from the Pyramid Lake Settlement bill. The long-awaited settlement on the Truckee River should not be thwarted while the parties on the Walker River seek a solution to the problems in their watershed. The Tribe wholeheartedly supports the idea that the problems on the Walker River, like those on the Truckee, should be resolved by negotiations among the affected parties, rather than through protracted and costly litigation. Indeed, we have no reason to believe that a mutually acceptable solution could not be reached. But it has taken four years to reach consensus on the Truckee River; we doubt that there is sufficient time to resolve the serious problems on the Walker River in the very short period established for passage of the Pyramid Lake settlement legislation.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
PACIFIC SOUTHWEST REGION

PACIFIC SOUTHWEST FIELD COMMITTEE
BOX 36090 . 450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

December 11, 1970

Memorandum

To: Acting Secretary of the Interior

From: California-Nevada Interstate Compact Committee

Subject: Proposed Consolidated Federal Position

On September 3, 1970, our Department was requested by the Office of Management and Budget to take "lead responsibility" in developing a Federal position with respect to the proposed California-Nevada Interstate Compact. The primary motivation was the recent passage by the California Legislature of A. B. 1350 (enacted September 19, 1970), which embodied a form of compact proposed by the State of California and which is to be considered by the Nevada Legislature early next year. We were also advised by the Office of Management and Budget that Mr. J. R. Riter, the Federal Representative, was being requested to seek to reopen negotiations with the states.

By memorandum of September 23, 1970, the former Secretary, Walter J. Hickel, appointed our field committee for the purpose of drafting a consolidated Federal position as to the proposed compact and directed that we proceed immediately.

In the process of carrying out our instructions we have had numerous meetings over the last several months during which time we have given long and serious consideration to the manifold problems inherent in the subject matter of the proposed compact. In this regard we requested and received the assistance and counsel of not only the Interior staffs and agencies represented by the members of this committee, but also other Interior offices and personnel as well as representatives of the Departments of Agriculture and Justice and

EXHIBIT "A"

Mr. Riter, the Federal Representative. A list of the participants in our meetings is attached hereto and designated Attachment A. The assistance and cooperation of the participants was extremely helpful and greatly appreciated.

Although we received and welcomed the assistance of the other participants in this endeavor and the work product of this committee reflects the joint efforts of all concerned, the final recommendations of this committee were reached by the committee itself and do not necessarily reflect the views of other participants. In fact portions of our recommendations are not concurred in by the Department of Agriculture as evidenced by a letter to this committee from Sheldon G. Boone dated December 3, 1970, and attached hereto as Attachment B.

It is our understanding, however, that the basic responsibility for recommending a consolidated Federal position on this proposed compact was vested in this committee and, therefore, after consideration of various viewpoints and reasons in support thereof, including the points noted in Attachment B, the committee came to its own conclusions and recommendations. We understand that it is the intent of the Office of Management and Budget to circulate for comment by other interested agencies whichever Federal position is tentatively approved by you and that office. The Department of Agriculture and other departments so inclined will, therefore, have another opportunity to express their views.

Mr. Riter has also advised us that the States of California and Nevada have suggested that negotiations with the Federal government on the compact will not be sought until after the Nevada Legislature has acted on the modifications to the compact as enacted by California in A. B. 1350. It is anticipated that the Nevada Legislature will take action on this matter early in its next session, which commences in January 1971.

We believe it to be unnecessary to reiterate in detail the long history of this proposed compact; suffice it to say that a compact has been under active study and consideration for the last 15 years. The impetus for a compact is the fact that the respective rights of the two states and the Federal government have not been adjudicated with respect as to their competing uses in the four interstate water basins here concerned. As stated in Article I of the proposed compact, the purposes of the compact are:

> "... to provide for the equitable apportionment of water between the two states; to promote interstate comity and to further intergovernmental cooperation; to protect and enhance existing economies; to remove causes of present and future controversies; to permit the orderly integrated and comprehensive development, use, conservation and control of the water within the Lake Tahoe, Truckee River, Carson River, and Walker River Basins."

As in many other parts of the country, the water demands and conflicts in the four basins here involved are becoming increasingly more complex and controversial and require some form of immediate resolution.

The compact approach has been used successfully many times in the past to resolve interstate water controversies and it was selected here in lieu of litigation as a preferred potential solution. This committee agrees that of the alternatives available the compact procedure appears to offer the most satisfactory method for resolution. We hasten to add, however, that as we view it, the compact procedure was originally intended to apply to situations where two or more states had a basic disagreement on a subject matter of peculiar applicability and importance to the compacting states and with minimum, if any, direct Federal interests involved. Thus, in the normal situation all that was necessary was for the compacting states to agree on a formula to resolve their differences and Congress would be asked to merely consent to the provisions of any such proposed compact pursuant to the Article I, Section 10 of the United States Constitution. Typically the compact would disclaim any effect on Federal laws, properties, rights or projects. In the present situation, however, it was quite obvious from the outset that the major interests concerned in any compact involving three of the four named basins were Federal. This fact was admitted by the Joint California-Nevada Interstate Compact Commission in their letter of August 1, 1968, to the Federal Representative wherein they stated:

> "At the outset of negotiations some twelve years ago certain principles were formulated for the negotiations of compact terms. It was recognized that the claimed rights of the United States would preclude a compact between the States of California and Nevada since the

> . United States through its professed claims could utilize all of the waters of the Truckee and Carson Rivers and Lake Tahoe'...."

In spite of this fact the Federal Representative appointed to participate in the negotiations for this compact, for whatever reasons, was not permitted to affirmatively "negotiate" for protection of basic Federal interests. This situation has resulted in a somewhat awkward and embarrassing circumstance where it can truthfully be alleged (as it has) that the Federal government has been represented on the joint compact commission for 15 years, and, therefore, should not now be heard to complain about a lack of opportunity to "negotiate." This allegation can be met in some degree, but the committee felt that the rationale for this situation should be determined by the Federal Representative and not by this committee.

The reason for mentioning the foregoing is to preface our recommendations with the understanding that the currently proposed compact, although 15 years in the making, has little protection for vital Federal interests. Therefore, since it has apparently been decided that a compact is in the best interests of the United States (and the committee concurs in this), comprehensive rewriting of the presently proposed compact is essential and is what this committee has undertaken.

In analyzing the situation our committee concluded, from the Federal government's point of view, that the proposed compact presents three practical alternatives or approaches: (1) to reject any Federal participation whatever in the compact; (2) to permit limited Federal participation; and (3) to become a full party to the compact by way of a tri-party agreement. Rather than selecting only one of these alternatives and pursuing it as the committee's recommendation, it was decided to prepare and discuss a position as to all three with a recommendation by the committee as to the most preferable in our judgment. Thus, if it is decided to follow an approach other than that recommended by this committee, an alternate Federal position would be immediately available for use.

APPROACH I -- NO FEDERAL PARTICIPATION

Under this approach the proposed compact would be so amended as to preclude subrogation of any Federal interests or right, leaving in substance merely an agreement between the states.

It should be recognized, however, that the consequence of this approach would in net effect be a rejection of the compact. This possibility was recognized by the Joint California-Nevada Interstate Compact Commission in their letter of August 1, 1968, to the Federal Representative wherein they stated:

> "The United States owns or controls virtually all of the storage and diversion facilities on the Truckee and Carson Rivers and Lake Tahoe. If it does not agree to the allocations to each of the two states, obviously such allocations are of no force or effect."

The method of implementing this approach is set forth in Attachment C hereof.

The committee recommends that Approach I not be adopted. We are of the belief that this approach would inevitably lead to long and protracted litigation between the States of California and Nevada and the Federal government. The water problems and shortages in these basins are critical and must be resolved as soon as possible, and if Arizona v. California is any criterion, litigation of water problems, the magnitude of those here concerned, is clearly not a satisfactory method of resolution. It must be conceded that if successful negotiations under one of the other approaches discussed hereinafter is not possible, the Federal government may well be forced to utilize Approach I in the best interests of the United States. It is submitted, however, that this approach should be one of last resort and not one of preference, and we so recommend.

APPROACH II -- LIMITED FEDERAL PARTICIPATION

Under this approach the Federal government would not be a party to the compact but would participate to a limited extent in certain of the compact provisions and its resulting commission by virtue of express consent of Congress to specific provisions of the compact. This is in substance the approach presently contemplated and recommended by the states. It is to be recognized, of course, that inherent in any decision to pursue a compact is a determination that there will be some compromise in the traditional Federal position that the states do not and cannot exercise any control or authority over Federal rights, projects, or lands.

The major drawback to this approach, in our view, is that the states would be full parties and have primary control over the use and distribution of what are essentially Federal waters and storage facilities, with the Federal government merely having a subservient and somewhat passive role in the administration of the compact provisions. This procedure is undoubtedly acceptable in situations where the state interests are dominant, but, as previously noted, this certainly is not the case in regard to the subject matter of this proposed compact. The committee recognizes, however, that for other cogent reasons it may be desirable to utilize this limited participation approach rather than the tri-party approach (Approach III hereinafter) which this committee feels is the strongest and best approach from the viewpoint of the Federal interests. In substance then, this committee recommends that Approach II be adopted only if it is determined that Approach III is not feasible. We feel that Approach III gives the strongest voice and protection for the Federal interests and should be adopted, as discussed more fully hereinafter.

Attachment D contains our detailed suggested changes from A. B. 1350 to provide what we consider maximum practical protection for our Federal interests. There is also attached thereto a rationale for each proposed change. Our objective under this approach was to accept the basic compact as proposed by A. B. 1350 and to make only those changes which we felt were essential to provide protection in those areas wherein the Federal government would consent to be bound by the compact provisions.

The major changes from A. B. 1350 recommended by this committee under Approach II may be summarized as follows:

Article IV -- The California-Nevada Compact Commission

We have amended this article to delete the residency requirements of the Federal member and have also given him a vote. We recognize, however, that for all practical purposes the one vote of the Federal member will not be determinative of any matter before the commission since the article requires the concurring votes of both states to approve a motion or other action. Since Federal participation is limited under this approach, we did not feel that more than this token vote was required or would be accepted by the states.

Article VI -- Truckee River Basin

As originally proposed by the Joint California-Nevada Compact Commission, this article posed such a catastrophic threat to Pyramid Lake that this Department, as well as the Pyramid Lake Indians and others, actively opposed the compact during its consideration by the California Legislature. The California Legislature agreed that the original version was indeed a threat to Pyramid Lake and after several unsuccessful amendments, finally accepted the version in A. B. 1350 as providing as much protection for the lake and the Indians as they felt was necessary.

Although the present version is concededly better than the original, the committee felt that it could and should be even more protective of Pyramid Lake and the claimed rights of the Pyramid Lake Indians. For this purpose then, the committee proposes to amend Article VI to provide for acceptance of any future judicial determination of Indian rights to additional water. We propose also to recognize recreation as a beneficial use on Pyramid Lake as well as other areas.

One further matter is treated here and in Article VII; that is the issue of water requirements for the Stillwater Wildlife Management Area. The committee recognizes the importance of Stillwater and at the same time we recognize the tenuous and uncertain status of its water supply. We felt that this compact might afford an opportunity to at least express the desires of both states that Stillwater be kept viable and leave to another forum the task of determining the best method of accomplishing this objective. We are aware, for example, that the Pyramid Lake Task Force is currently studying this problem, among others, and hopefully will make some affirmative recommendations in this regard.

Article VII -- Carson River Basin

The A. B. 1350 version of this article in essence vitiates the claimed rights and priorities of the Federal government as alleged in the pending Alpine case. The article has been rewritten to provide for recognition of the present interim decrees in that case and acceptance of the final decree therein when issued. The Departments of Interior and Justice feel that such amendments are necessary under any form of compact to permit final judicial adjudication of the Carson River and to obtain, if possible, the consent of California and Nevada to be bound thereby.

Article VIII -- Walker River Basin

The committee has amended this article to provide protection for the Walker River Indians in the event they too may obtain a future judicial determination of entitlement to additional waters.

Article XXI -- Nonimpairment of Rights of United States

For purposes of clarity and emphasis, the committee has added additional areas of sovereign rights and authority to this article to avoid any erroneous interpretation of intent to subrogate in these fields.

Article XXII -- Ratification and Consent

By rewriting the major portions of the provisions of the compa to which the Federal government would specifically consent to be bound under this article, we believe we have narrowed and clarified the precise areas wherein the Federal government would participate in this form of compact.

APPROACH III -- TRI-PARTY FEDERAL-STATE COMPACT

The committee is aware of the fact that the tri-party compact is a relatively new concept in that only one or two compacts have historically utilized this concept. However, we feel that the factual and political situation involved in the presently proposed compact are such that the interests of the United States and of its Indian wards can best be represented and protected in a tri-party compact where the Federal government has equal voice and authority in administering and enforc the compact provisions.

As we have mentioned previously herein, this is not the usual compact situation where the Federal government is only minimal or indirectly involved in the subject matter. To the contrary; in this case the major subject matter is conceded by all concerned to consist of vested or claimed rights of the United States or its wards. In this circumstance it seems to this committee that the desirability, indeed the necessity, for full representation and participation by the United States in the administration of the compact provisions is practically self-evident.

Since a policy decision to encourage a compact in this area has been made, we see very little alternative to adequate safeguards for Federal interests other than full voice in the administration and enforcement of the compact provisions.

Approach II, although providing some protection for Federal interests, obviously places the Federal government in a subservient role in that we have no meaningful vote or voice on the compact commission; and, further, not being a party to the compact, we would be in a tenuous position if it became necessar to seek enforcement of any compact provision.

For the above reasons, among others, it is the unanimous recommendation and urging of this committee that Approach III, the tri-party approach, be adopted as the consolidated Federal position in any future negotiations concerning this compact.

Attachment E contains a detailed version of a proposed tri-party compact and there is attached thereto a rationale for each proposed change in terminology from A. B. 1350.

The major elements in the tri-party compact approach may be summarized as follows:

Articles I and II: Purposes and Definitions

Federal government has been added as a signatory party.

Article IV: The California-Nevada Compact Commission

This article has been extensively revised to permit full and equal representation on the commission by the Federal government Each state and the Federal government is given an equal vote on all matters coming before the commission, with the right of veto in any party. Likewise, each party is to share equally in the expenses and duties of the commission.

Articles VI and VII -- Truckee and Carson River Basins

The same changes are here made as discussed under Approach II above, and for the same reasons.

Article VIII -- Walker River Basin

This article has been extensively rewritten to, inter alia, provide: protection for the potential claims of the Walker River Indians; to clarify storage rights in Weber Reservoir; to eliminate preferential treatment to Antelope Valley water users; and to avoid unnecessary conflict and confusion by deleting provisions for extrajudicial watermasters.

Article XXI -- Nonimpairment of Rights of United States

Substantially same changes as in Approach II for same reasons. We have added in this approach, however, a clause expressly reserving to Congress the right to withdraw the United States as a party to this compact or to otherwise modify the terms, conditions or provisions under which the United States may remain a party.

Article XXII -- Ratification and Consent

Since the Federal government would become an equal party under this approach, no consent to specific provisions of the compact would be necessary since we would be agreeing to the terms and conditions of the entire compact. Authority, however, is reserved in Congress to terminate the compact at any future time.

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

After long and arduous study and consideration, and for the reasons expressed hereinabove, it is the conclusion and recommendation of this committee that the consolidated Federal position, with respect to future negotiations on the proposed California-Nevada Interstate Compact, be the tri-party approach as suggested by Approach III attached hereto (Attachment D).

Obviously it would be impractical for the committee to endeavor in this report to discuss each and every consideration which preceded the committee's judgment in selecting the proposed pr terminology in the foregoing three approaches. We have here and in our attached "rationales" endeavored to cover some of these factors; however, in view of the fact that Mr. Riter, the Federal Representative, and his legal counsel, Mr. Rendo, were present during our deliberations, they are generally informed concerning the reasons for our respective determinations and recommendations. In this regard it might also be suggested that it would be helpful to the Federal negotiator to have one or more members of this committee available for consultation prior to or during his negotiations in the event additional clarification or assistance may be needed. We would be happy to provide such assistance as may be necessary.

For additional convenience we have also attached hereto, as Attachment F, a copy of A. B. 1350 as finally approved by the Governor of California.

We feel that it is desirable to control the circulation of the proposed versions of the three approaches discussed and submitted herewith; 100 copies have been made of Attachments C, D and E. The copies are numbered from 1 to 100 and in each instance the copy numbered 1 is attached to the original of this report.

The recipients of copies of this report and a notation as to the numbered copies they have received are set forth in Attachment G.

Because of the sensitive nature of these documents, no distribution has been made other than that listed herein. The distributees are hereby requested not to make any copies or further distribution of these documents unless specifically authorized by the Secretary of the Interior or the Director of the Office of Management and Budget.

Respectfully submitted,

John D. Findlay
Member

George W. Hedden
Member

Robert J. Pafford, Jr.
Member

William M. Monroe

William M. Monroe
Chairman

Attachments

The Truckee River: Just how dirty is it?

By Jim [illegible]/Gazette-Journal

Roy Dorf says he's seen enough.

The Truckee River near his Fernley home has gotten filthy, he says, and on holidays when Reno is jammed with tourists — and the sewage treatment plant upstream is working overtime — he can walk down to the banks and smell the pollution.

"Sometimes the river is so damn green it's pitiful," says Dorf, a 35-year resident of the area. "If you don't believe me, just go down there and smell it for yourself."

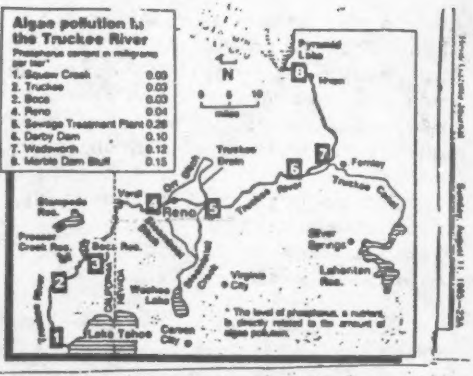
Dorf isn't the only one worried about the quality of the lower Truckee River. The Pyramid Lake Paiute Indian Tribe is suing Reno and Sparks over river pollution. And operators of the Reno-Sparks Joint Sewage Treatment Plant — located at a bend in the river where clear water is suddenly clouded by foul-smelling runoff — are in the middle of a major project to further purify the plant's effluent.

California and Nevada officials agree the Truckee needs help, but the problem has them pointing fingers at each other and questioning whether their neighbor is doing enough to protect the river.

It's a feud that began 100 years ago when Nevada farmers complained that California loggers were fouling the river water they used for irrigation. It continues today with water quality experts blasting their colleagues' sanitary programs.

California may have more room to complain. In recent years it has spent millions on a treatment plant and erosion control programs to ensure that the river's water remains pristine when it crosses the state line near Floriston. The three-stage treatment facility in Truckee is one of the most modern in the state and isn't allowed to discharge even its thrice-purified product directly into the

See TRUCKEE, back page



Reno Gazette-Journal Sunday, August 11, 1985—23A

Truckee River water debate

From page 1A

river. Glenshire, a riverside subdivision east of Truckee, has been ordered to build a $10 million sewer collection system that will cost residents plenty.

"You can't do more than we do," says Roy Hampson, director of California's Lahontan Regional Water Quality Control Board. "We put ourselves in the shoes of Nevadans and asked, 'What would we want if we lived there?'"

The Truckee remains relatively "pristine" as it courses through Reno, Hampson says, but on the outskirts — just as the river flows past the treatment plant — there is a marked deterioration. Hampson blames the treatment plant, which isn't as sophisticated as California's but nonetheless discharges effluent directly into a nearby tributary.

"That kind of plant just wouldn't be allowed in our region," Hampson says. "Not when you're trying to protect the pure waters of the Sierra Nevada."

State Water Quality Engineer Wendell McCurry says the Reno-Sparks plant is only part of the reason why the Truckee can't meet the state's water quality standards after it leaves the Truckee Meadows. Once hampered by breakdowns and toxic waste contamination, the plant today meets state effluent standards and promises to soon be as thorough as the Truckee plant.

The problem, McCurry says, is the filthy discharges coming from Steamboat Creek and the North Truckee Drain, which empty into the river near the treatment plant. These streams wind through gravel pits, past heavily fertilized fields and near several Washoe County neighborhoods that still use septic tanks.

Their union with the clear Truckee is marked on aerial photos by distinct brown plumes. Water quality tests taken where the two meet show a sharp decline in the river's purity.

The explanations don't do much to soothe the angry Californians, some of whom feel they're paying too much to protect a river that Nevada only allows to deteriorate.

They point out that while Californians have been spending millions to put in a high-tech sewer system, residents in Verdi just over the border still use septic tanks. Other Nevada subdivisions also are on septic tanks, even though state officials suspect the sewage is seeping into the Truckee's tributaries.

"No one likes to spend money anyway," says real estate agent Christy Curtis, assessing how some feel about the high cost of Truckee's sewers. "Some balk when they see what's happening down the road."

"It's always a complaint that, 'Why should we have such stringent standards up here when they aren't so strong downstream?'" says Hampson. "Our answer is we have to do what's right. We can't control what's downstream."

Californians had little choice when they agreed to build the plant for the Truckee-Tahoe Sanitation Agency, which collects sewage from five different districts at north Tahoe.

Before the Truckee plant went on line in 1978, the various sanitation districts were plagued with problems. In Tahoe City, the district pumped sewage into an extinct volcano, and when holding ponds overflowed in 1975, sewage poured into the Truckee. That same year, when sewage ponds at the Truckee Sanitation District overflowed, someone installed a pipeline that sent only partially treated sewage directly into the river.

The incidents made many in Nevada distrustful, and they pushed to install a pipeline that would carry north Tahoe sewage to Reno for treatment. But Californians declined.

John Gonzales, sanitary engineer at the Reno-Sparks plant, said those incidents — and other California plant failures that have sent sewage discharges into Nevada — have made Californians defensive. He says the Reno-Sparks plant is also a "convenient scapegoat" for those trying to explain pollution in the lower Truckee.

"Californians make me so mad," he says. "They love to pick on Nevada and say things like, 'We're great and they don't know what they are doing.' That's absurd."

Gonzales says his plant will be

Greg [illegible]/Gazette-Journal

WATER TEST: Jack Barker, a Reno Sparks Sewage Treatment Facility lab technician, tests water samples from the Truckee River and Steamboat Creek.

just as sophisticated as the Truckee facility by 1988, when workers finish putting in sludge- and nitrogen-removal facilities and better filtration.

As it is, the plant's effluent is much cleaner than the state requires. Plant workers raise goldfish and catfish in an aquarium fed with effluent, and tests show that what's being pumped into Steamboat is actually improving the creek's pathetic condition. The percentage of phosphorus in the effluent is close to Steamboat's, but the creek has much higher flows and a wider variety of polluting nutrients. The effluent is clear; the creek is brown.

Cleaning up Steamboat and the North Truckee Drain may be more difficult. Unlike their California counterparts, Nevada water officials won't order subdivisions to hook into the sewer system. But they will work with residents to try to secure federal and state funding that helps pay for the project — as California did for Glenshire.

"We've been working on this for 25 years," says McCurry, whose office tightened water quality standards for the Truckee last year. "It's frustrating."

That's not to say the state can't get heavy-handed. It is cracking down on industrial polluters whose chemical discharges into the Truckee plagued the treatment plant in 1984, and several years ago a plant malfunction that dumped sewage into the river for 45 minutes brought a $10,000 fine.

The state has also kept an eye on California, which many feel could do a better job of controlling riverside erosion — a problem that shows up when cloudbursts muddy the river. There are also complaints the commercial rafting on the Truckee near Tahoe City has played havoc with the river's aesthetics and ecosystem.

McCurry says Washoe County, Reno and Sparks will help improve the river's quality by forcing builders to better control erosion. And he said an incentive to get homeowners off septic tanks is the policy of area banks to turn down loans for non-sewered homes.

None of this means too much to the Pyramid Lake Paiutes, who say pollution in the river is killing trout and sucker fish the tribe is trying to restore.

Tribe attorney Michael Thorp says the Indians want the cities to "come up with a different system" for treating their sewage. He said using the effluent for irrigation — a system that has helped cut down on the pollution of the Carson River — is the "smart answer."

"Their only argument is that they have to put it (the plant) somewhere," Thorp said. "That's why they put it below the cities rather than above them. You don't see people playing around in the river after it flows past that treatment plant."

Thorp said the Indians sued the cities because they were tired of the state and federal Environmental Protection Agency ignoring the Truckee's problem.

"In other states, they are right there," he says. "But in Nevada that doesn't seem to happen."

Meanwhile, the uproar that came from Roy Dorf and his neighbors in Churchill County seems to be dying down. Three years ago, when the Stampede Reservoir was besieged by heavily polluted water that killed fish and left rotting algae on the shoreline, many Fallon residents were worried their wells would be polluted.

"We don't hear as many complaints," says Churchill County Manager Bjorn Selinder. "They've worked diligently to improve the river, and it shows."

EXHIBIT "E"

EXHIBIT "F"

Quiet border valleys fear water grab

Legal battles seen over Sierra Pacific acquisition plan

Water plan

From page 1A

and we didn't even know about them. We organized quickly, but the county was put in a defensive position rather than one of participation."

Sierra Pacific's interest in water supplies in Placer, Nevada and Sierra counties made many rural leaders uneasy for other reasons.

Their water ordinances were old and possibly obsolete, and — in the case of Nevada county — the local water agencies hadn't been active in more than 20 years.

In areas of Plumas, Lassen and Sierra counties — where local authorities carefully monitor supplies and enforce rationing during droughts — there was already a fear of dwindling water. In Nevada County, planners were wondering if they had enough water to accommodate a population that was expected to double over the next 20 years. It had doubled since 1975.

To make matters worse, Sacramento rice growers were also starting to look to the mountains for more water. The counties were finding sandwiched between the powerful interests on both sides of the mountains.

"The history of water over the last 150 years is that any metropolitan area gets the water it wants," said Ted Oldenburg, a Nevada County geologist who specializes in groundwater. "Los Angeles is a good example: look what they did to the Owens Valley. I don't see Reno saying they are going to grow to a certain size and stop because they don't have any more water. That's never happened before."

Sierra Pacific, meanwhile, has tried to discourage what officials feel is the unnecessary "emotionalism" that resulted from its March resources report. The utility says it's primarily interested in developing Nevada sources, and that it already has legal rights to much of the California water it is looking at anyway.

According to its report, the utility will consider taking water from Donner Lake and Independence Lake, which it already holds rights for, returning certain water diversions in the Truckee River and developing [illegible] upstream storage areas along Martis Creek, the Truckee and the Little Truckee River. It has no plans, officials say, of drilling wells in Martis Valley or Sierra Valley and exporting the water to Reno.

"I think they've blown it all out of proportion," said Sierra Pacific engineer Bob Firth. "There's been a lot of misconception and emotionalism."

Sierra Valley ranchers remain deeply concerned, however. Ranchers there have been diverting water from the Little Truckee River since 1870 to irrigate their fields, and now the utility wants to return that water to the Truckee.

Sierra Pacific would compensate the ranchers by digging irrigation wells or buying up the 8,400 acres being irrigated by the water. The best of the purchased ranchland could be irrigated with water from the Feather River and then resold, utility officials say.

But in light of recent well failures and water shortages, many ranchers vehemently oppose the idea.

Walt Bowman, who owns a 750-acre ranch near Loyalton, said the water table in the valley is down 25 feet this year, and he's already lost one of his four irrigation wells. Other ranchers say they haven't enough water to irrigate as it is, and that Sierra Pacific's plan would worsen the situation.

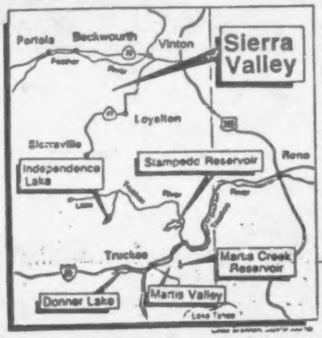
And for others, it's a moral issue.

"If Reno doesn't have enough water, that's too bad — it has to suffer the consequences of overexpansion," said rancher John Beretta. "We shouldn't have to subsidize their greed and profits."

Beretta, a former college professor who has operated his 400-acre spread for 25 years, said water supplies in the normally lush valley are unusually low. He no longer has enough to irrigate his grazing land, and he's worried his domestic well will dry up if Sierra Pacific drills the 18 new wells it would need to replace the Truckee diversions. He said he'd never sell out to the utility.

"This is where I've chosen to live and the way of life I've chosen," he said. "I don't appreciate the enormous interference developers make of our way of life."

Sierra County has already passed an ordinance that would



require a permit for water exportation. A county rancher could sell his water rights to Sierra Pacific, but the utility wouldn't be able to send the water to Nevada without permission from the county, which Supervisor Jerry McCaffry said isn't likely.

"I don't think they'll get any of our water," McCaffry said. "I wouldn't have thought that three months ago, but now I doubt it."

Nevada County is working on a similar ordinance.

Sierra and other counties have also teamed up to form inter-county management districts that monitor supplies and issue rationing orders when water is low. The districts in Plumas, Lassen and Sierra counties were the first in the state when put into operation four years ago, and the careful water studies that have resulted have made county residents even less sympathetic to Nevada's water woes.

"We're doing what Reno should have done 30 years ago," McCaffry said. "Obviously, Reno has come to a point where growth is outrunning water, and they're in a desperate situation."

In Lassen County, officials are worried the utility will tap into an aquifer that stretches across the state line near Honey Lake. Sierra Pacific is considering piping that water south to Reno, and Lassen officials are worried there will be shortages in Susanville if the aquifer is pumped too much. They're also worried that a budding agricultural business in alfalfa and strawberries will dry out.

"We're convinced there is a threat that Nevada will pump more water out of the aquifer than goes into it from their side of the state," said county Planning Director Bob Sorvaag.

Meanwhile, many counties have requested a formal inventory of their water supplies by the California Department of Water Resources. They've also taken their complaints to the State Water Resources Control Board and the County Supervisor Association of California, which has asked California Gov. George Deukmejian to meet with Gov. Richard Bryan to discuss "this attempted raid on California water." No meeting has been set yet, but California water officials have already started creating their Nevada counterparts.

"We're not going to be cavalier about this," said Roy Hampson, director of the Lahontan Regional Water Quality Control Board in California. "Water is the critical issue right now. If we let them take the water, they will take it."

The Nevada Public Service Commission hasn't taken a position on Sierra Pacific's California water search. The PSC sparked the whole conflict when it ordered Sierra Pacific to start preparing the resource plan, and now staffers fully expect the whole matter of water exportation to wind up in court.

"We're going to go after the easy water first, direct the utility to go after it, but while we're growing using the easy water, we have to start the wheels for more difficult waters," PSC engineer Tim Holt said. "It may well be that some of this litigation will start in the near future."

While the PSC ordered the report to ensure that Sierra Pacific customers had enough water, it's never been made clear if the commission feels a responsibility to just existing water users or to those who would be able to move here if there were enough water to accommodate the growth.

"Our interest is the economic well-being of the customer and the utility," Holt said.

Oldenburg also points out that the authority of a county to retain its water is still largely untested in court. The PSC and Sierra Pacific both feel that if it can purchase water rights in California, it should be free to export the water wherever it wants.

"Some say they can, some say they can't," Bosien said. "I guess it'll be up to the courts to decide."

Many of the Californians feel that Sierra Pacific's current plan is just the beginning, that the utility will continue to seek water.

And as that search continues, signs indicate the water situation in some California areas is worsening. Experts like Oldenburg are finding that the underground aquifers aren't recharging in drought years as quickly as they once did, and that more and more wells are going dry.

"We may be acting emotionally, but we have just cause," Oldenburg said.

HKM

HKM Associates
Engineers/Planners

Airport Industrial Park
P.O. Box 31318
Billings, Montana 59107-1318
Phone (406) 245-6354/259-1993

Branch Offices:
Libby, Montana
Sheridan, Wyoming

Statement to Congressional Committee Public Hearing on the Proposed Ratification of the California-Nevada Water Compact

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HKM, at the request of the Walker River Tribe and it's attorneys, has reviewed the proposed California-Nevada Compact for its effect on the Walker River Reservation.

There are three basic issues which presently affect the Reservation's water use pattern which would be accentuated by the proposed compact. They are:

A. Water Supply

There is an existing decree determining water usage in the Walker River Basin with an effective date of 1939. Based on the period 1939 to 1983, the Reservation has been shorted their decreed amount a significant number of times during the irrigation season. This happened even though sufficient water was available at all times to supply them with their decreed amount. This has occurred because of errors in management, new uses being allowed, changes in cropping patterns and other reasons. To ratify this compact and allow the States of Nevada and California to solidify these junior uses and changes in water use patterns that are upstream of the Reservation, will increase this problem and further impact the Reservation.

B. Water Quality

The water quality of water coming on the Reservation has diminished throughout the years. This is because of the number of reuses of the basic water supply and the amount of pollutants that are introduced through various agricultural and domestic practices upstream. The water quality may be diminished shortly to the point that it will not be useable for fisheries, irrigation or domestic use. To ratify this compact as presently constructed will cause serious water quality problems for the Walker River Tribe.

C. Land Base

The compact in its present state ignores totally the irrigable lands available for tribal development on the areas restored to the Reservation in 1936. There are, at a minimum, 10,000 acres of land which could be economically irrigated by the Tribe but which do not have a recognized water right.

Passage of the compact in its present form and with its present language would appear to prohibit this development and would be injurious to the Walker River Tribe.

If the compact is passed in its present form, the Tribe will suffer a severe lack of water and its development will be curtailed. The compact does not recognize properly the water supply problems in the basin nor does it provide for proper water management techniques necessary for the Tribe and non-Indians to develop the land based resources adequately.

A. T. Kersich

A. T. Kersich, P. E.
President

Mr. **Taylor**. We have a couple of questions. I would like to ask what your understanding is of the storage rights to water that are allocated to the Walker River Tribe under the provisions of article 4(A)(4)(b) of the compact?

Mr. **McElroy**. Our understanding is that the rights awarded in 8(A)(4)(b) are in addition to the decreed rights. That is, that the tribe gets 13,000 acre-feet of storage rights with the 1933 priority date for Webber Reservoir. That they get 9,450 acre-feet with a 1933 right for direct diversion flows, plus the 26.25 CFS with an 1859 priority date referred to in the Walker River decree, C-125.

Mr. **Taylor**. This is your understanding of the——

Mr. **McElroy**. That is our understanding. I have——

Mr. **Taylor** [continuing]. Provisions in the compact?

Mr. **McElroy**. Yes.

Mr. **Taylor**. Are those understandings agreed to by the water—the Walker River management system?

Mr. **McElroy**. I'm not certain whether they agree that those rights in part (b) are supplemental, or in addition to the other rights. I have seen references in State reports to the contrary.

Mr. **Taylor**. What impact would the compact have on the administration of the court's decrees?

Mr. **McElroy**. Well, we are very concerned about that. Our concern stems from the provisions in article 8(A)(4)(a), which allocates to each State the amount of existing diversions and uses within the State. It doesn't say existing rights, it says existing uses. And it goes on to state that they are not certain what those uses are, what the priority dates are, and the amounts of water involved.

Historically, our engineers tell us that the tribe has not received the direct flow rights to which it was entitled under the decree in each and every year. Our engineering summary states that. We are concerned that the ratification of upstream uses may even make it more difficult for the tribe to obtain even its decreed rights in the future, since those uses will be ratified, so to speak.

Mr. **Taylor**. My impression from the testimony that we received from the prior panel is that there really is very little water that has not already been the subject of the decree or a State permit of some sort. I guess you call that unallocated water. Is my impression correct?

Mr. **McElroy**. Well, we are somewhat at a disadvantage at this stage because we have not spent the last 4 years looking at this issue. This all comes to the tribe rather quickly and we have some problems in sorting out the facts.

Our concern is that the tribe is being told that its rights are limited to the C-125 rights, plus the rights set forth in article 8(A)(4)(b). Article 22 of the compact makes certain provisions binding on the United States, its agencies, and its wards. One of those provisions is article 8(A)(4)(b), which says there shall be allocated to Nevada for use on the reservation a maximum amount of such and such and such. And that is what triggers our concern that the compact is a limitation on the tribal rights.

Now, it is very easy to say that there is not much water left, but on the other hand, it is the only water left. We have been through hearings in front of the Nevada State Legislature involving proposed upstream storage to utilize those rights at Hoye Canyon. It's a very important issue. It may pale in comparison to the 300,000 or 400,000 acre-feet of water that is available to the river as a whole, but it is the only water left and it is the only place to look, unless you are going to take water away from existing uses.

Mr. **Taylor**. Is there any effort currently being made to determine what potential water may be upstream that is not currently already use of some sort?

Mr. **McElroy**. I am sure that different people are doing it. We are trying to get a handle on it.

Mr. **Taylor**. Are you working with the Department of the Interior on that?

Mr. **McElroy**. We have not had much luck in garnering assistance from the Department of the Interior about these matters. Mr. Willie wrote the Secretary in early August explaining the tribe's concerns about the compact, and we have not received a response.

Mr. **Taylor**. I am sorry to make this brief, but we can provide followup questions on this. And I do really want to get to a couple of these other witnesses, so thank you very much. We certainly are aware of your concerns.

Mr. **Willie**. Thank you.

Mr. **Taylor**. Our next panel is Mr. Donald Anderson, chairman of the board of Mineral County, accompanied by Larry Bettis, the county attorney. I would like to bring up at the same time Mr. Robert Lybarger of the Central Nevada Development Authority, and Mr. Roy Hampson, the executive director for the California Regional Water Quality Control Board.

I realize you are two separate panels, but this will expedite things, I believe. Mr. Anderson, why don't you proceed?

Mr. **Anderson**. Yes, sir. Mr. Chairman, I am Donald Anderson, chairman of the board of Mineral County Commissioners. And Mr. Larry Bettis will speak for Mineral County.

STATEMENT OF LARRY G. BETTIS, MINERAL COUNTY DISTRICT ATTORNEY, ACCOMPANIED BY DONALD ANDERSON, CHAIRMAN OF THE BOARD, MINERAL COUNTY COMMISSIONERS

Mr. **Bettis**. Mr. Chairman, on behalf of Mineral County we have already submitted a detailed written statement, and ask that that be made part of the written record here today. I am going to summarize from that particular written statement and only refer to portions of that.

The citizens of Mineral County are deeply concerned that the California-Nevada Interstate Compact, as presently proposed, excluding Walker Lake from the definition of Walker River basin, will wreak disastrous effect on Walker Lake and hasten the death knell which has loomed over the Lake's existence as a fishery, since man started diversion of water upstream along the Walker River.

During the 1971 session of the Nevada Legislature, when the compact was ratified excluding Walker Lake from the definition of the Walker River basin, it was not fully cognizable to the citizens of Mineral County the dramatic effect the following years of sparse river flow due to dry climatic conditions and upstream diversions would have on the receding shorelines of the lake.

The Nevada Department of Fish and Game filed for water rights for Walker Lake, and later was joined in such application by Mineral County. The State engineer's office granted water permit No. 25792 in May of 1972 to the Nevada Department of Fish and Game for diversion of water from Walker River to Walker Lake in the amount of 8,000 cubic feet per second, subject to existing rights.

The compact, having been ratified prior to the engineer's permit No. 25792, does not recognize any right of water to Walker Lake from the Walker River basin. In effect, the compact terms are contrary to the water permit, and will prevent the application of the permit.

Inclusion of Walker Lake within the definition of Walker River basin in the compact will assure water rights to Walker Lake when adequate water is available and afford consideration of the plight of the lake in the deliberations of the compact commission.

Walker Lake is the natural terminus of the Walker River basin, and as such, should be included within the definition of the basin. Any activity upstream on the Walker River has a direct impact on the well-being of the lake, which is a compelling reason why the lake should be afforded the same protection under the terms of the compact as the users of the Walker River upstream.

This integral relationship between a terminal lake and the sole river which is its primary source of water has already been recognized by this compact in the situation of the Truckee River basin. Article 2, paragraph D, of the compact, states that the term Truckee River basin shall mean the area which naturally drains into the Truckee River and its tributaries, and into Pyramid Lake including such lake.

Pyramid and Walker Lakes share many attributes of similarity. They are both natural lakes—remnants of the Lahonton Lake, and as previously noted, both are terminus lakes in their respective river basins. Historically, native Americans have habitated both shores, and presently both are included within the boundaries of the Indian reservation.

Each support fisheries of cutthroat trout as a major game fish. And as earlier in the testimony, it was stated that the cutthroat trout in Pyramid Lake became extinct. I wish to submit that it was fish from Walker Lake that revitalized that particular fishery.

Tourists, recreationists, and sports enthusiasts at both locations provide a major economic stimulus to the local rural communities in the area. Without Walker Lake being included within the definition of the Walker River basin, administrative and judicial decisions could be made in accordance with the compact without consideration for Walker Lake, even though those decisions may be detrimental.

The California-Nevada Compact Commission as presently comprised would not permit anyone from Mineral County, unless they are a resident of the Walker Indian Reservation, to serve on this Commission.

On December 12, 1983, the State engineer of Nevada recognized that water entering into Walker Lake from Walker River is of beneficial use for recreational purpose, and granted the Nevada Fish and Games Department application, filed in 1970, and tentatively approved the May 1972 for water rights from Walker River for use in Walker Lake in the amount of 795.2 cubic feet per second of water, or 578.870 acre-feet per year. This, of course, is subject to any prior and existing rights on the river system.

This, in effect, gave the Walker Lake all flood waters, as usually there is only sufficient water in the river to handle existing water rights during normal flow. The compact, however, contemplates the construction of new major storage facilities on the west Walker River in order to capture water released from Topaz Reservoir, in order to make additional storage space available in that particular reservoir. Once the new storage facility is in place, any water released on that location would have been deemed to have been held in storage. This would mean, then, that the water not stored and allowed to go downstream will apply to Nevada's allocation of water, thereby, in higher runoff years permitting the unused water provisions of the compact to come into effect.

The same scheme of determining unused water upstream also applies to the water rights allocated through the Webber Reservoir and the Walker River Indian Reservation downstream. In fact, any number of storage facilities could be constructed upstream and store water adversely to the storage rights of Webber Reservoir, so long as the water is released following the spring floods of each year to satisfy Webber Reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

Consequently, the compact eventually will bring about the result of not permitting any water to remain in the river below Webber Reservoir other than that released to meet the water rights of the Walker River Indian Reservation, and those waters returning to the river discharged from irrigation practices.

The compact precludes in article 8 the consideration of existing diversions and uses the water downstream from Webber Reservoir in determining the amount of water to be allocated to each State respectively.

Furthermore, unused water shall be used only within the Walker River basin according to the compact. Under the present compact terms, then, the water rights granted to the Nevada Fish and Game Department for Walker Lake cannot be preserved or perpetuated. Inclusion of Walker Lake within the definition of Walker River basin would assure that the existing water rights, including Walker Lake, would be taken into consideration by the commission. And if actions concerning appropriation of water, it would further assure that any water declared to be unused would be appropriated to Walker Lake as being in the public interest of the Walker River basin as a whole.

Mr. TAYLOR. I might just note, Mr. Bettis, that apparently in the letter of Secretary Andrus to the Director of OMB in 1979, he took note of this question about the Walker River drainage definition, and I believe even recommended in an attached analysis that the compact should be amended in the fashion that you're recommending here.

It is certainly an issue that we will have to think about as we look at this legislation, in the same context that we will have to look at it in terms of the positions of the Walker River Indian

Tribe and I believe the Washoe Tribe, which has yet to testify. So, we certainly will look at that problem.

Mr. **Bettis**. Thank you.

[Mr. Bettis submitted a prepared statement, on behalf of Mineral County, "Comments of Mineral County on S. 1558 and H.R. 3213," which follows. Testimony resumes on p. 512.]

COMMENTS OF MINERAL COUNTY ON S. 1558 AND H.R. 3213

27 September 1985

Donald M. Anderson
Chairman

Robert C. Lybarger
Member

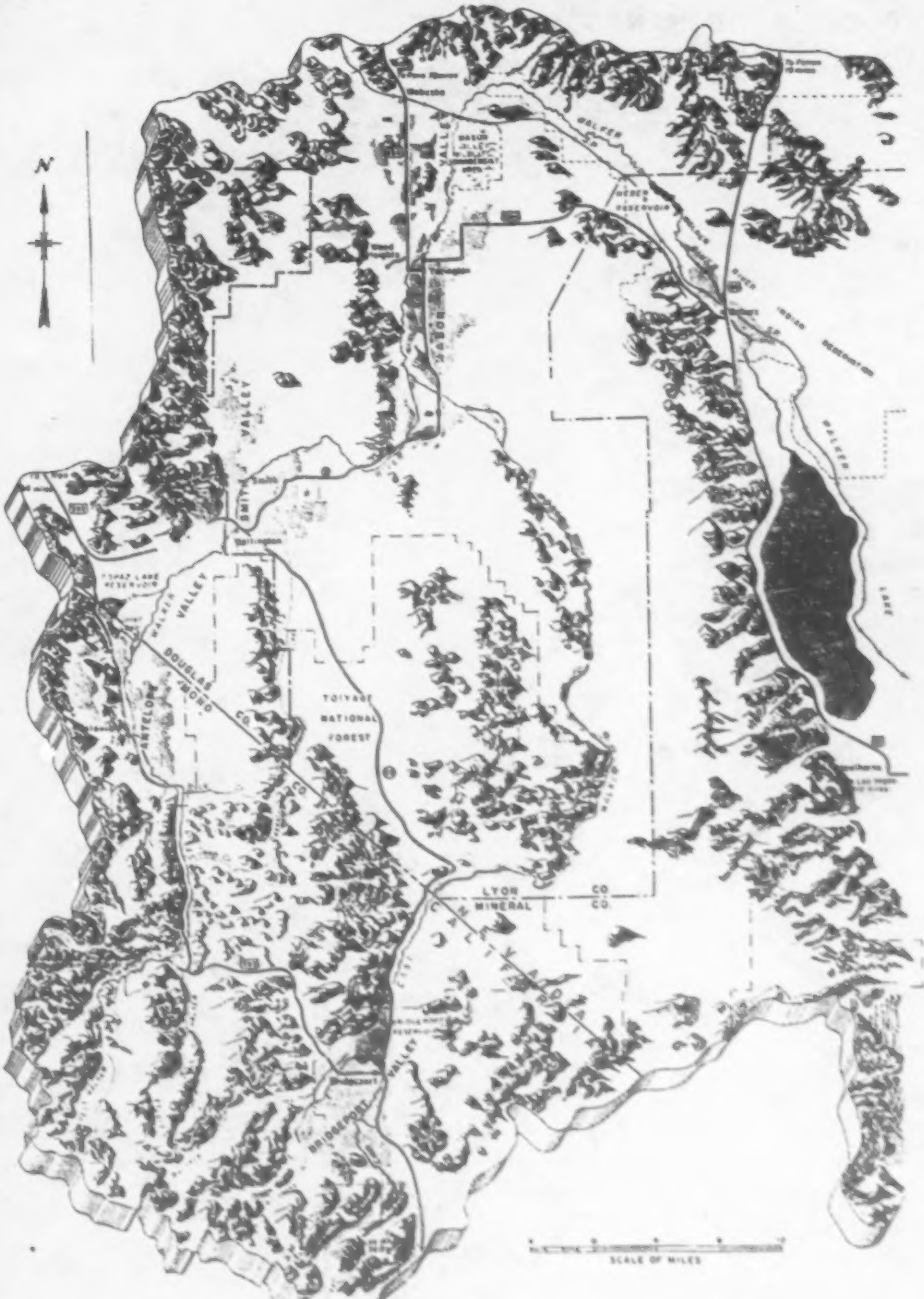
Allen E. Conelly
Member

BOARD OF MINERAL COUNTY
COMMISSIONERS
P.O. Box 1450
Hawthorne, Nevada 89415

(702) 945-2446

Larry G. Bettis
MINERAL COUNTY
DISTRICT ATTORNEY
P.O. Box 1210
Hawthorne, Nevada 89415

(702) 945-3636


N
WALKER R.
WEBER RESERVOIR
MASON VALLEY
WALKER RIVER INDIAN RESERVATION
WALKER
LAKE
VALLEY
SMITH VALLEY
Wellington
TOPAZ LAKE RESERVOIR
WALKER VALLEY
DOUGLAS CO.
MONO CO.
ANTELOPE
TOIYABE NATIONAL FOREST
LYON CO.
MINERAL CO.
CALIFORNIA
NEVADA
BRIDGEPORT VALLEY
SCALE OF MILES

PREFACE

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INTRODUCTORY

The citizens of Mineral County are deeply concerned that the California-Nevada \Interstate Compact as presently proposed will reek disastrous affects on Walker Lake, and hasten the death knoll which has loomed over the lake's existence as a fishery, since man started diversions of water upstream on the Walker River.

During the 1971 Session of the Nevada Legislature when the Compact was ratified, excluding Walker Lake from the definition of the Walker River Basin, it was not fully cognizable to the citizens of Mineral County the dramatic effect the following years of sparse river flow, due to dry climatic conditions and upstream diversion, would have on the receding shore lines of the lake.

The Nevada Department of Fish and Game filed for water rights for Walker Lake, and later was joined in such application by Mineral County. The State Engineer's Office granted Water Permit #25792 in May of 1972, to the Nevada Department of Fish and Game, for diversion of water from Walker River to Walker Lake in the amount of 8,000 cubic feet per second, subject to existing rights.

The Compact, having been ratified prior to the Engineer's Permit #25792, does not recognize any right of water to Walker Lake from the Walker River Basin. In effect, the Compact terms are contrary to the water permit, and will prevent the application of the permit.

Inclusion of Walker Lake within the definition of "Walker River Basin" in the Compact will assure water rights to Walker Lake when adequate water is available and afford consideration of the plight of the lake in the deliberations of the Compact Commission.

Walker Lake is the natural terminus of the Walker River Basin, and as such should be included within the definition of the basin. Any activity upstream on the Walker River has a direct impact on the well being of the lake which is a compelling reason why the lake should be afforded the same protection under the terms of the Compact as the users of the Walker River upstream.

EFFECTS OF CALIFORNIA-NEVADA COMPACT ON THE MINERAL COUNTY-WALKER LAKE PORTION OF THE WALKER RIVER BASIN

I.

WALKER LAKE AND WALKER RIVER

Walker Lake being the largest body of surface water in Mineral County is the terminus of the entire Walker River drainage which includes about 4000 square miles in Nevada and California. Walker Lake, together with Pyramid and Honey Lakes, are remnants of Lake Lahontan, a large Quaternary age lake. With increased dryness, water levels receded to where Walker Lake Basin was isolated hydrologically from Lake Lahontan and Walker Lake as it is now known occupies the southernmost area of the ancient lake.

Due to the prevailing long periods of continued dryness, diversions for irrigation, seepage and losses to the groundwater basin and evaporation, the stage of Walker Lake is continually receding. The series of terrace and high water marks visible around the Lake are reminders of this decline.

The majority of the flows of the Walker River originate from winter snowfall in the Sierra Nevada Mountains where precipitation at the crest (3,659m) averages 127 cm annually (National Oceanic Atmospheric Administration). The climate of the lake is greatly influenced by the rain shadow produced by the Sierra-Nevada and Wassuk Range. Annual precipitation drops to 51 cm in the highest portions of the Wassuk Range, while Hawthorne at the south end of Walker Lake only receives approximately 10 cm annually. Daily temperatures ranged from -10 C to 12 C in January and between 10 C and 38 C in July. Annual pan evaporation is about 122 cm. Therefore, the climate of the Basin ranges from subhumid in the higher mountains to arid in the valleys and lower ranges.

The level of Walker Lake has been declining very rapidly in recent geological time, with subsequent increase in salinity and alkalinity. Since 1915 the lake's level has dropped at an average rate of 0.6 m per year. If the lake stage continues to recede at this rate it is projected that equilibrium will be reached between the years 2010 and 2060, at which the maximum depth would be approximately 12.2 m (Rush 1970). The estimate from this study is a depth of approximately 7.5 m at equilibrium. Figure 3 depicts the variations in the elevation of Walker Lake from 1915 - 1977. The major cause of this decline prior to 1915 was believed by many observers to be caused by an extended climatic dry cycle over geologic time. Evidence indicates that the lake has been at a much lower level since the time of Lake Lahontan, and it was actually increasing in altitude at the time it was discovered by the white man (Benson 1978). Since the turn of the century upstream diversions of Walker River water by agricultural interests have been the primary factor responsible for the decline in lake level.

F. Eugene Rush, in the report, "Hydrologic Regimen of Walker Lake, Mineral County, Nevada, 1974" stated "From about 1918 to 1968, the trend in stage has been a marked recession, averaging about 2 feet per year."

Figure 4.1 is a plot of the Walker Lake water surface elevation of record. Figure 4.2 is a compilation of the average monthly elevation of Walker Lake for 1968 through 1975. From July, 1969, to July, 1974, the Lake dropped from elevation 3977.4 to 3967.6 or approximately 10 feet in 5 years to also average a decline of 2 feet per year in that time span.

The flows into Walker Lake from the Walker River and drainage from the east slope of the Wassuk Range are unknown but from all sources it is estimated to be in the range of 74,600 to 117,400 acre feet annually and evapotranspiration in the Lake area of 4000 to 4100 acre feet per year, leaving 70,500 to 113,400 available for the Lake. Table 4.2 presents past estimates and the estimate of this report.

Figure 4.1 is a plot of the Lake stage (elevation) between 1905 and 1975. The mean slope of decline line indicated in the Figure 4.1 utilizing the Lake area and volume per stage at 5-year intervals between 1945 and 1970 and an inflow of 85,000 acre feet per year results in a 5-year loss range of 3.8 to 4.4 feet from the Lake surface per year with a mean of 4.07 feet. Future forecasts for the Lake are based on an evaporation loss of 4.1 feet per year.

Upon continued water surface decline, degradation of water quality will also continue as the dissolved solids are concentrated. The main factors controlling the concentration of dissolved solids in the Lake is the volume of water that flows into the Lake, thereby diluting the dissolved solids and the evaporation of water from the Lake surface area leaving the dissolved solids behind and thereby increasing the concentration.

In the report, Hydrologic Regimen of Walker Lake, Mineral County, Nevada by F. Eugene Rush, 1974, it was noted that in September, 1882, the estimated total dissolved solids content of Walker Lake was 2,560 ppm. Because of the high stage of the Lake at that time, the lake water probably has its lowest solute concentration since the dry period of the early 19th century.

Due to the continued decrease in Lake volume, the total dissolved solids content is rapidly approaching 10,000 mg/liter as analysis of the Lake's water in early 1976 indicated a concentration of 9,540 mg/liter of total dissolved solids. A sample taken on June 26, 1976, indicated the TDS was 9738 mg/liter.

Table 4.3 is a compilation of water quality data from several agencies. The U.S. Geological Survey, Water Resouces Division in Carson City, Nevada, has sporadically monitored the water quality of Walker Lake. In 1975 the U.S. Environmental Protection Agency in Las Vegas, Nevada, took several samples at three locations and varying depths in Walker Lake as part of a National Eutrophication Survey.

The Walker River is the principal source of surface water in Mineral County. It enters the County and Walker Lake Valley at the northwest corner, from where it flows approximately 19 miles through the Walker Indian Reservation and discharges into Walker Lake. No surface water is contributed to Walker River in Mineral County other than infrequent storm runoff and irrigation return.

The nearest measured discharge of the Walker River is the Wabuska gauging station located some 10 miles above the Mineral County line. Over the 50 years of actual records the river flow has averaged 115,200 acre-feet per year at Wabuska. The maximum discharge observed was July 10 and 11, 1906, when 3,280 cubic feet per second passed the gauging station. The minimums were no flow at times during the water years of 1924, 1925 and 1931.

The maximum volume was in the water year of 1914 when an estimated 540,000 acre-feet passed the gauging station at Wabuska. During more recent time, in the water year of 1969, 403,200 acre-feet passed the gauging station, which is the third highest annual flow of record. However, the 123,300 acre-feet of average annual flow over the last 28 year period 1948 to 1975 probably reflects more accurately the long term average discharge under the present conditions of upstream development. The average annual flows at the Wabuska gauging station are shown in Table 4.4 along with maximum and minimum discharges during each water year.

The average flow used in forecasting future Lake stages has been taken as 113,000 acre-feet per year. It is anticipated to be more representative for future years. It was obtained by the average of the flow from 1948 through 1975 and excludes 1969.

Table 4.5 is a compilation of average water quality of the Walker River at the Wabuska gauging station. In the past there were sporadic water quality analysis made on the River, but in 1969 the Wabuska gauging station was designated as a National stream-quality accounting network station whereby the quantity and quality of water flowing past the station is continually monitored and the stream flow data is relayed to a LANDSAT satellite, stored and retransmitted to the Office of Data Coordination. During the water year of 1975, monitoring of trace metal content was commenced.

It has been assumed over a period of time the dissolved solids passing the gauging station will reach Walker Lake with an average TDS of 326 or a mean of 320 mg/l. The 113,000 acre-feet of flow carries approximately 98 to 100 million pounds of dissolved solids each year.

MINERAL COUNTY AND WALKER LAKE GENERAL LOCATION

Mineral County is located in the West-Central portion of Nevada. The southwest boundary of Mineral County is also the

State line dividing California and Nevada. The rugged Wassuk Range of mountains serves as a physical barrier along the western and northwestern boundary dividing Mineral County from Lyon County. Mineral County is bounded by Churchill County to the north, Nye County to the east and Esmeralda County to the south.

HISTORICAL BACKGROUND

The use of the County's resources began with early travelers and explorers. Peter S. Ogden was probably one of the first white men to see Walker Lake in 1829, when he entered Nevada on the way to Southern California. Ogden followed the Humboldt River to its sink, passed near Weeks, Adrian Valley and along the north end of Walker Lake.

John C. Fremont, perhaps the best known of Nevada's trail makers, in 1845 was exploring eastern Nevada, crossed the Ruby Mountains at Harrison Pass and continued southwesterly to about Austin and over to Walker Lake. Joseph Walker, for whom Walker Lake and River were named, veteran of several previous trips through the state, was accompanying Fremont westward and they split the party with Walker and his group crossing the Ruby Mountains at Secret Pass, then westerly along the Humboldt River, through the Humboldt Sink and southerly to meet Fremont at Walker Lake.

Prior to 1849, none of the travelers or explorers had stayed in the County to make their homes. The area to most people seemed to be a harsh land of barren wastes and high mountains.

In the late 1850's some settlement took place along the Walker River. A drought in 1862-1864 brought ranchers to the River where some irrigation was developed to supply additional feed for their livestock.

In 1859, the discovery of silver in the Comstock of Virginia City brought hordes of prospectors into the County. The discovery of gold and silver in Aurora and Bodie, California, brought many people into the area and caused many miles of wagon roads to be constructed. The mining activities were carried on with a total disregard for the environment. Prospect holes, rusted and broken equipment and tailing dumps dot the landscape in the mining areas.

The Walker River Paiute tribe of Indians inhabited the lower Walker River and the north shore of Walker Lake. The files of the Nevada Indian Agency, U. S. Bureau of Indian Affairs at Stewart indicate that early in November, 1859, Indian Agent Dodge recommended to the Secretary of the Interior that lands in the vicinity of Walker Lake be set aside for the use of the Paiutes and Shoshones of that region. The Secretary issued a directive to this effect on November 29, 1859, and a survey of the reservation area was made in 1864.

However, it was not until March, 1875, that a presidential Executive Order made the creation of the Walker

Lake Indian Reservation official. Reservation headquarters were located at Schurz, where they have since remained.

At this time, the reservation area was 320,000 acres. In 1906 it was reduced to 85,760 acres, but by several accretions over the years since that date, notably a 171,200 acre addition of public domain lands in 1936, the reservation was built up to its present boundaries of 320,511 acre size.

Prior to Nevada obtaining statehood, Aurora was the first county seat of Esmeralda County which included the area of Mineral County as it is known today. Hawthorne, the largest population center in the subbasin, sprang suddenly into being with the arrival of the Carson & Colorado Railroad at the site on April 7, 1881. On April 14 an auction of lots in the townsite, already surveyed and staked out by the railroad, started the town off with a rush.

Besides its early-year importance as a division point on the railroad, Hawthorne quickly developed into the transshipment point for mail, passengers, express and freight bound for Bodie and Aurora, via the Walker Lake and Bodie Toll Road. In 1883 Hawthorne snatched the Esmeralda County seat honors away from faded Aurora, and in turn lost them to booming Goldfield in 1907. With the increase of mining activity around Hawthorne and Mina, the residents of the northern half of Esmeralda County requested the State Legislature of 1911 to divide the county. The newly created county was aptly named Mineral, and Hawthorne was again designated as the county seat.

In 1928, the Department of the Navy moved into the county to establish an ammunitions manufacturing depot following the explosion of a naval ammunition arsenal in New Jersey in the mid-1920's. This lightning-induced explosion inflicted heavy damage and loss of life in the densely populated area surrounding the arsenal; the Navy thereupon began hunting for a new site in some sparsely populated part of the West. It finally settled upon the Hawthorne-Wassuk Range-Walker Lake region in western Nevada. Since Hawthorne could not accommodate all the personnel needed to service the new base, the Navy built it own "company town" -- Babbitt, two miles northwest of Hawthorne. The manufacture and storage of ammunition were expanded to meet the demands of the Second World War and the Korean Conflict.

TOPOGRAPHY

Physiographic Features

Mineral County encompasses about 3,800 square miles, with the major portion located within the Great Basin section of the Walker River subbasin. Valleys in the Great Basin and in Mineral County have a generally integrated, but not a well developed drainage system and are separated by northwest to northerly trending and irregular mountain masses.

Walker Lake is the largest body of water in the County. The only other water body is Weber Reservoir on the Walker River Indian Reservation. Small perennial flows in the larger canyons of the Wassuk Range are sustained by springs and snow-melt.

Topography

Terrain in Mineral County is divided into mountains, less steep intermediate slopes flanking the mountains, and the valley floors, most of which are closed basins or sinks such as Walker Lake, which is the terminus of the Walker River. Higher peaks in the mountains are between 6,000 and 8,000 feet in elevation except for those high peaks in the Wassuk Range. Most of the peaks in the Wassuk Range are above 9,000 feet in elevation, with Mount Grant being the highest at 11,239 feet. Corey Peak is 10,520 feet in elevation.

The valley floors are generally above 4,400 feet in elevation, with Walker Lake being the lowest point in the County at 3,966.9 feet average during the month of September, 1975.

Features which occur on the valley floors throughout the County include flood plains and channels. Salt marches and alkali flats occur in some of the valleys located east and southeast of Walker Lake.

CLIMATE

The climate of Mineral County has an arid to semiarid characteristic in the valleys and ranges to sub-humid in the higher mountains. The climate is greatly influenced by the eastern rain shadow of the Sierra Nevada mountains and the Wassuk Range. Accordingly, humidity and precipitation in the lower valleys are low and temperatures are high. Snow up to 60 inches in the mountains during the winter months and localized thundershowers during the summer months provide most of the precipitation. Hawthorne, at about elevation 4,190, has a mean annual temperature of 55.1°F., a mean frost free season of 135 days and a mean annual precipitation of 4.58 inches.

VEGETATION

Vegetation in Mineral County is typical of most all arid to semiarid climates. Sagebrush and other desert shrubs grow in the valleys and on the lower slopes of the mountains.

Mixed juniper and pinon pine forests are predominant in the higher elevations of the mountain ranges. Mountain mohogany is also abundant in the higher parts of the Wassuk Range.

Aspen and cottonwood trees grow along the streams and near springs on the eastern slope of the Wassuk Range.

POPULATION

Mineral County ranks twelfth in size and in 1970 ranked eighth in population among the seventeen counties in the State of Nevada, yet ranks third in the State as having almost 90 percent of the land within the County under public ownership. This has concentrated most of the population into and around Hawthorne and Babbitt where about 84 percent of the population of the County resides. The activity at the Hawthorne Army Ammunition Plant has reduced to post World War II status. This reduction, in turn, has reduced the economy base, jobs and, as a result, a reduction in population since 1970. The current 1985 estimate of population is 6,200 of which 84 per cent reside in the Hawthorne-Babbitt area.

LAND USE

Mineral County's land use pattern has been very stable over the years inasmuch as 82 percent is controlled by the Federal Government and 9.5 percent is under the ownership of the Walker River Paiute Indians. Out of the total land within the County, there is only about 3 square miles that could be classified as urban. The rest of the County is rural in nature. Most of the public land is controlled by the Bureau of Land Management, Forest Service and Hawthorne Army Ammunition Plant, all agencies of the Federal Government. The County owns 3,365 acres or about 0.1 percent of the total land within the County.

ECONOMY

Mineral County is unique in regard to its isolation. The Navy sought the remoteness in which to establish the Naval Ammunition Depot, now known as the Hawthorne Army Ammunition Plant, which forms and supplies the economic base for Hawthorne and the County. It is reported that over 50 percent of the labor force within the County was employed by the U. S. Navy and/or other Federal Government agencies in 1970.

The services industry sector of the County, centered in Hawthorne, includes lodging, restaurant and casino workers that make up the local gaming industry, which provides employment for aproximately 20 percent of the labor force.

Employment linked with tourism is not easily definable as it is linked with services and retail sales. The tourism activity is based primarily on the resources of Walker Lake for boating and fishing for the Lahontan Cutthroat Trout and the gaming industry in Hawthorne. In 1985, the estimated value of Walker Lake as a fishery was $403,350.00 per year, and $1,058,670.00 for other recreational purposes.

WALKER LAKE FISHERY

Since historical times the lake has provided a significant source of protein to man. Aboriginal Indians, of todays Paiute Tribe, utilized the Walker Lake's bountiful resources for food and barter (Snyder 1917, Bathe 1978).

Petroglyphs found near the lake show fish swimming out of the lake and up the river. Further evidence of the importance of the fishery to the Indians is in the naming of the individual bands around the lake. The group that lived at the mouth of the river where the trout made their annual spring migration were called the "Trout Eaters", and those that lived at the south end were called "Chub Eaters" (Allan, NDFG 1958).

By the late nineteenth century the early white settlers were also harvesting trout from both Walker and Pyramid Lakes. One such record from Pyramid Lake shows that during the winter and spring of 1888 and 1889, in a period of only six months, one hundred ton of trout were caught by commercial fishermen and shipped by Wells Fargo express and the railroad to many parts of the United States (Wheeler 1969). Many fish from both lakes supplied the early mining camps such as Virginia City, Tonopah, Goldfield and Manhattan.

The history of the Lahontan Cutthroat Trout fishery in Walker Lake shows its deterioration between the years of 1935 and 1949 as a result of dam construction of the Walker River and subsequent loss of natural spawning habitat (Allan, NDFG 1958). The construction of Weber Dam in 1953 put an end to the annual spawning migration of the cutthroat trout to the upper reaches of the watershed, where habitat conditions were satisfactory for successful reproduction. The trout population is now maintained through hatchery and stocking programs currently being conducted by the state and federal governments. La Rivers (1962) states that it was the Walker Lake strain of Lahontan cutthroat which was used to restock Pyramid Lake after that strain became extinct in that body of water due also to upstream degraded spawning habitat in the Truckee River.

Due to the lake's receding level and subsequent increasing salinity and alkalinity coupled with high summer epilimnetic surface temperatures and hyplimnetic oxygen depletions, the fishery is in serious jeopardy.

Efforts have been made to introduce other species into Walker Lake. Transplant attempts have been made with several salmon species, including Silver, Coho, and Atlantic Salmon, several salt-water sunfish, and the highly salt-tolerant Corvina from the Salton Sea--all with no success. There are reportedly two bodies of water, one in Africa and one in Russia, with salt concentration similar to that of Walker Lake that are able to sustain game fish populations. It is possible these species could be adapted to Walker Lake. However, in view of the results of previous transplant attempts with other species, the outlook for maintaining a viable fishery in Walker Lake is not good.

II.

CALIFORNIA-NEVADA INTERSTATE COMPACT

Exclusion of Walker Lake

As presently drafted the Compact excludes Walker Lake from the definition of "Walker River Basin".

Article II Paragraph F of the Compact states:

> "F. The term 'Walker River Basin' shall mean the area which naturally drains into the Walker River and/or Walker Lake upstream from the intersection of the river and/or lake in Mineral County, Nevada, with the northern township line of Tier 10 North, Mount Diablo Base Line."

Walker Lake is the natural terminus of the Walker River and is an integral part of the entire basin. Any impact on the Walker River upstream has a direct effect on Walker Lake.

This integral relationship between a terminal lake, and the sole river which is it's primary source of water has already been recognized by this Compact in the situation of the "Truckee River Basin".

At Article II, Paragraph D, the Compact states:

> "D. The term 'Truckee River Basin' shall mean the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake including such lake, but excluding the Lake Tahoe Basin."
>
> (Emphasis added)

Pyramid and Walker Lakes share many attributes of similarity. They are both natural lakes being remnants of the Lahontan Lake. As previously noted, both are terminus lakes in their respective river basins. Historically native Americans have habitated both shores, and presently both are included within the boundaries of Indian Reservations. Each support fisheries of Cutthroat Trout as the major game fish. Tourist recreationists and sports enthusiasts at both locations provide a major economic stimulus to the local rural communities in the area. Foliage and plant life surrounding each is consistent with the high desert terrain common to both.

Without Walker Lake being included within the definition of the Walker River Basin, administrative, and judicial decisions could be made in accordance with the Compact without consideration for Walker Lake, even though these decisions may be detrimental.

The California-Nevada Compact Commission as presently comprised would not permit anyone from Mineral County, other than a resident of the Walker River Indian Reservation, to serve as a member of the Commission, even though all the residents of Mineral County have an interest in the lake. These interests, in many cases, may be divergent from those of the Indian Tribe.

Even more importantly, inclusion of Walker Lake within the definition of the basin, would give non-reservation residents of Mineral County, standing to raise issue concerning proposed actions of the Commission or to request that certain actions be taken, pursuant to the authority vested by the Compact.

On December 12 through 28, 1983, the State Engineer of Nevada recognized that water entering into Walker Lake from Walker River is of beneficial use for recreational purposes, and granted the Nevada Fish and Game Department's application, filed in 1970 and tentatively approved in May, 1972, for water rights from Walker River for use in Walker Lake in the amount of 795.2 cubic feet per second of water or 578.870 acre feet per year, subject to all prior and existing water rights on the river system. This in effect gave to Walker Lake all flood waters, as usually there is only sufficient water in the river to handle existing water rights during normal flow.

The Compact, however, contemplates the construction of new major storage facilities on the West Walker River in order to capture water released from Topaz Reservoir in order to make additional storage space available in Topaz Reservoir to avoid flood damage later in the year. Once the new storage facility is in place, any water released beyond said location will have been deemed to have been held in storage. This will mean, then, that the water not stored and allowed to go downstream will apply toward Nevada's allocation of water, thereby in high runoff years permitting the "unused water" provisions of the Compact to come into effect.

This same scheme of determining "unused water" upstream, also applies to the water rights allocated to Weber Reservoir and the Walker River Indian Reservation downstream. In fact any number of storage facilities could be constructed upstream and store water adversely to the storage rights of Weber Reservoir, so long as the water is released following the spring floods of each year to satisfy Weber Reservoir rights to the same extent as they would have been satisfied in the absence of said adverse upstream storage.

Consequently the Compact eventually will bring about the result of not permitting any water to remain in the river below Weber Reservoir, other than that released to meet the water rights of the Walker River Indian Reservation, and those waters returning to the river as discharge from irrigation practices.

The Compact precludes in Article VIII 4.(a) the consideration of existing diversions and uses of water downstream from Weber Reservoir in determining the amount of water to be allocated to each state respectively.

"Unused water" includes all waters of the Walker River and its tributaries in excess of the amounts allocated as defined by the Compact. This unused water is to be divided 35% to California and 65% to Nevada.

Each state may develop separate surface storage projects to develop the unused water of the West Walker. California may even hold unused water adversely to Nevada, subject to release for consumption in Nevada in the same amounts, times and places, had the unused water been stored in Nevada; provided further, that Nevada shall not be deprived of water required for (1) maintenance of a minimum reservoir level for the preservation of fish life and (2) nonconsumptive uses which are found by the Commission to be in the public interest of the Walker River Basin as a whole.

Furthermore, "unused water" shall be used only within the Walker River Basin.

Under the present Compact terms, then, the water rights granted to the Nevada Fish and Game Department for Walker Lake, cannot be preserved or perpetuated.

Inclusion of Walker Lake within the definition of Walker River Basin would assure that the existing junior water rights, including Walker Lake's, could be taken into consideration by the Commission in its actions concerning appropriation of water, and it would further assure that any water declared to be "unused" could be appropriated to Walker Lake as being in the public interest of the Walker River Basin as a whole.

III.

CHANGES IN COMPACT THAT WOULD BE NECESSITATED BY INCLUSION OF WALKER LAKE IN DEFINITION OF WALKER RIVER BASIN

Changes to the existing Compact, would be minimal as the provisions of the Compact already recognize that the diversion of water is to be in accordance with the state's recognized rights, as provided under the law of the state where the diversion is made. The Nevada State Engineer's Office has previously granted to the Nevada Fish and Game Department the right to divert from the Walker River to Walker Lake 575,879 acre feet of water annually.

Provisions would need to be included concerning the flow of the river to satisfy the water rights of Walker Lake as established by the Nevada State Engineer, prior to a determination and allocation of unused water between California and Nevada.

Additional provisions requiring water being diverted upstream for storage adverse and junior to Walker Lake's rights to be released to satisfy those rights in such amounts as determined by the Watermaster, would also need to be included. CF Article VIII 4.(b)

Article VIII 4.(a) would need to be amended to reflect that the allocation of water between the states would reflect the uses of Walker River Basin diverted downstream from Weber Reservoir and not specifically covered in Decree C-125.

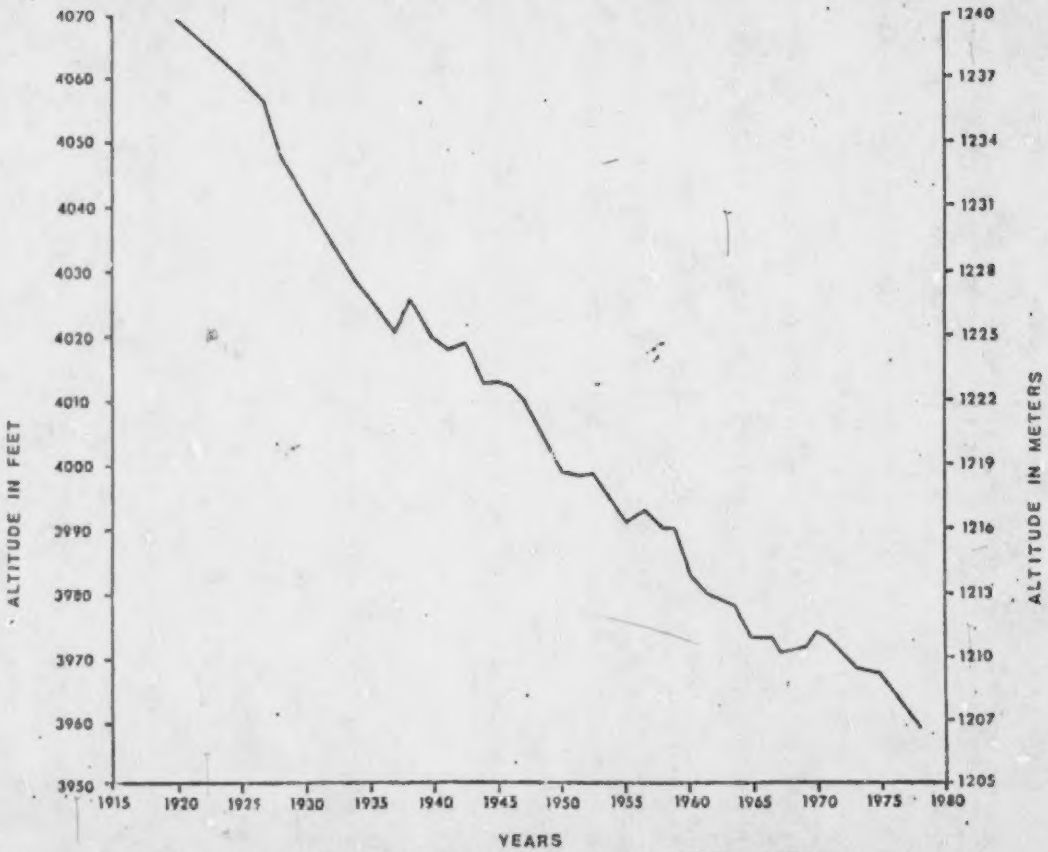
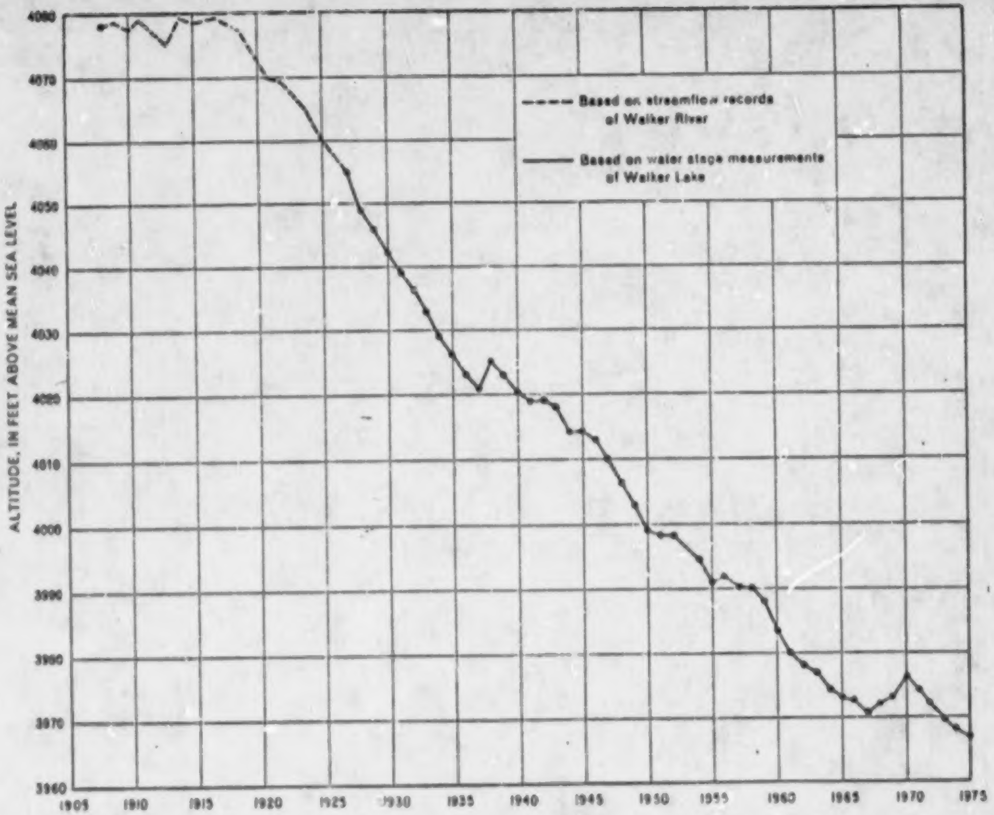
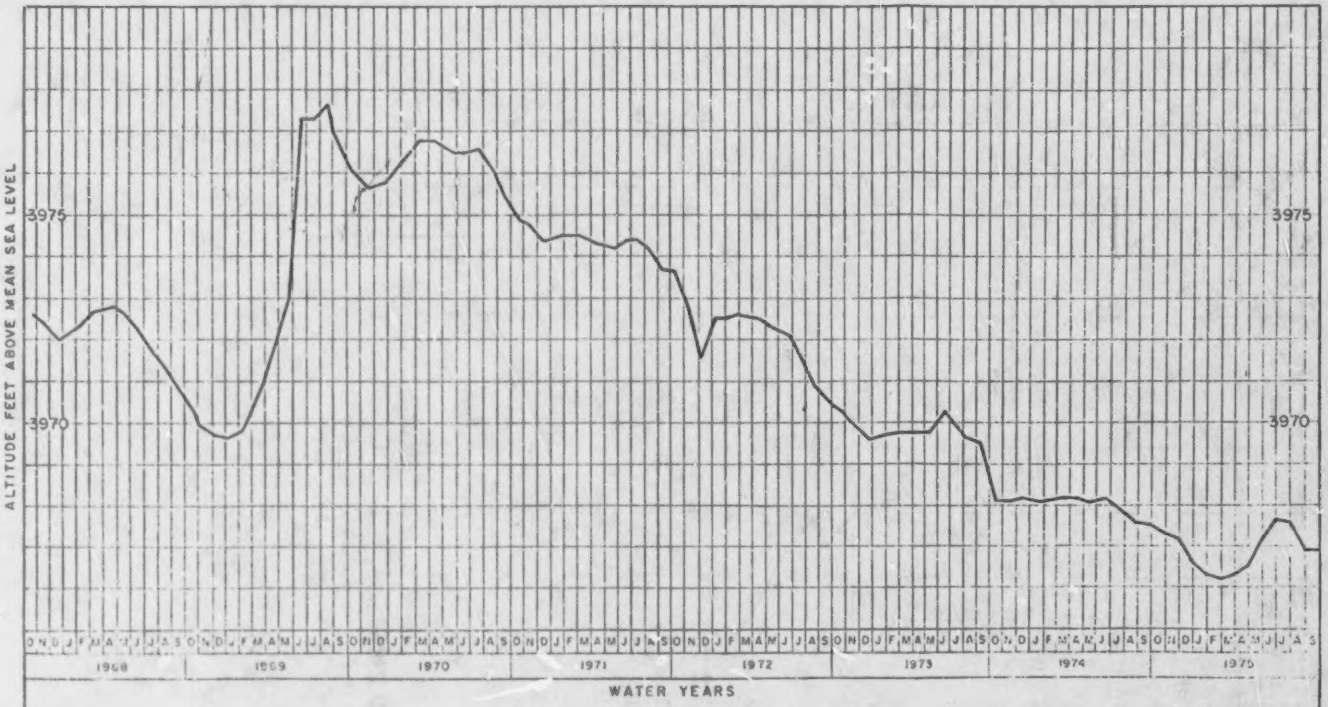


Figure 3. Variations in the Altitude of Walker Lake, 1915 - 1978.



VARIATIONS IN STAGE OF WALKER LAKE, 1908-75

FIGURE NO. 4.1



NOTE U S C & G S BENCH MARK U S N A D HAWTHORNE
ELEVATION 4,055 ft

SOURCE WATER RESOURCES DATA FOR NEVADA
WATER YEARS 1968 THROUGH 1975

MINERAL COUNTY WATER RESOURCE STUDY

MONTHLY STAGE ELEVATIONS OF WALKER LAKE

FIGURE NO 4 2

TABLE 4.3

WATER QUALITY OF WALKER LAKE

Date	Approximate Location of Sample Points	Depth Ft	Water Temp °C	EC MMHOS @25°C	pH	Ca mg/l	Mg mg/l	Na mg/l	K mg/l	HCO_3 mg/l	CO_3 mg/l	SO_4 mg/l	Cl mg/l	F mg/l	NO_3 mg/l	As mg/l	Hardness $CaCO_3$ mg/l	TDS mg/l
2/18/66	(1) NE 1/4 NW 1/4, Sec Sec. 32, T. 10N., R.29E.	-	5	12,100	9.3	4.2	123	3020	159	1630	484	1920	2010	20	1.0	-	520	8470*
4/7/66	(1) Center of Walker Lake	100	-	12,400	9.4	11.0	120	2880	184	1510	575	1890	1960	17	1.7	-	522	8390
12/13/72	(1) Lat. 38°40'; Long. 118°45'	90	6.7	11,700	9.5	7.6	130	3100	170	1700	553	2000	2100	20	-	0.98	550	8920
3/6/74	(1) Lat. 38°40'; Long. 118°45'	90	5.0	13,400	-	-	-	3100	-	-	-	-	2200	-	-	-	-	9340
1/15/75	(1) Lat. 38°40'; Long. 118°45'	96	6.0	13,300	9.3	-	130	3200	170	1700	604	2200	2300	-	-	-	-	9530
3/17/75	(2) Center of Lake 3/4 mi. off W. Shore	60	4.7	11,856	9.5	-	-	-	-	-	-	-	-	-	2.5	-	3920(3)	8300*
11/6/75	(2) Center of Lake 3/4 mi. off W. Shore	34	14.5	9,172	9.4	-	-	-	-	-	-	-	-	-	1.7	-	3960(3)	6420*

(1) Analysis received from the U. S. Geological Survey, Water Resources Division, Carson City, Nevada

(2) Analysis received from the U. S. Environmental Protection Agency, Water Resources Division, Las Vegas, Nevada

(3) Total Alkalinity as $CaCO_3$

* Calculated as 70% of the EC @ 25°C

TABLE 4.4

ANNUAL DISCHARGE OF WALKER RIVER NEAR WABUSKA, NEVADA

WATER YEAR	MAXIMUM DISCHARGE c.f.s.	MINIMUM DISCHARGE c.f.s.	ANNUAL FLOW Acre-Feet
1948	114	3.5	31,070
1949	200	9.0	36,520
1950	135	15	30,330
1951	1,750	25	158,600
1952	1,800	45	379,000
1953	955	25	121,800
1954	167	28	43,340
1955	260	12	34,620
1956	2,350	15	277,000
1957	535	41	88,350
1958	1,880	45	227,300
1959	316(a)	8.5	70,590
1960	128(a)	9.1	2[illegible],260
1961	149	10	23,780
1962	480	4.0	37,260
1963	2,280	25	169,200
1964	168	14	51,540
1965	909	8.6	123,200
1966	742	16	107,600
1967	2,110	7.5	237,100
1968	532	19	90,710
1969	2,680	26	403,200
1970	935	27	134,900
1971	1,060	22	93,720
1972	321	13	63,970
1973	1,480	16	104,400
1974	1,040	24	121,600
1975	1,350	42	165,200

Average Annual Flow 123,291 AF

(a) Momentary maximum

Data compiled from the annual reports "Water Resources Data for Nevada", U. S. Department of Interior, Geological Survey, State of Nevada and other agencies.

TABLE 4.5

WALKER RIVER WATER QUALITY AT WABUSKA, NEVADA
(FROM WATER RESOURCES DATA FOR NEVADA
U. S. DEPARTMENT OF INTERIOR, GEOLOGICAL SURVEY ANNUAL REPORTS)

Water Year Oct-Sept	Temp °C	Elec. Cond. MMHO/CM @25°C	pH	CA mg/l	MG mg/l	NA mg/l	K mg/l	HCO_3 mg/l	SO_4 mg/l	CL mg/l	F mg/l	NO_3 mg/l	NH_4 mg/l	PO_4 mg/l	SIO_2 mg/l	B mg/l	Total Dis-solved solids mg/l
1969	12	297	7.2	22	5	26	3.7	114	25	7.7	0.5	-	-	-	17	189	167
1970	11	466	7.5	39	9.1	54.9	4.9	190	66	20.1	0.9	0.7	0.03	0.8	22	361	313
1971	12.5	535	7.8	40	9.7	58.6	5.8	207	82	21.8	1.0	0.3	0.30	0.5	28	-	342
1972	14.5	538	7.9	45	10.7	69.0	5.8	225	86	27.2	0.9	0.2	0.10	0.3	28	-	374
1973	14.0	508	7.9	39	8.8	55.0	5.2	205	68	19.7	0.8	0.1	0.10	0.2	26	-	325
1974	14.5	482	-	37	8.6	50.3	5.0	193	58	17.0	0.7	0.1	0.13	0.3	24	-	297
1975	15.5	477	8.1	38	8.0	52.5	4.9	200	56	15.9	0.7	0.1	0.20	0.1	22	-	306

Mr. **Taylor**. Are you Mr. Lybarger?

Mr. **Lybarger**. Yes, I am.

Mr. **Taylor**. Would you proceed, please?

Mr. **Lybarger**. Yes, Mr. Chairman.

STATEMENT OF ROBERT C. LYBARGER, CENTRAL NEVADA DEVELOPMENT AUTHORITY, HAWTHORNE, NV

Mr. **Lybarger**. I am Mr. Lybarger, and I am also a member of the Board of Mineral County Commissioners. And as that, I have submitted a statement as a representative of the Central Nevada Development Authority.

Mr. **Taylor**. It will be made a part of the record.

Mr. **Lybarger**. Very briefly, I might mention that there is a part of the statement which includes a map showing the extent of the Central Nevada Development Authority. It was not organized until 1985, and it covers five counties, almost one-third of the State of Nevada and about—it covers about 37,000 people of the State.

The significance of this is that Central Nevada Development Authority, although it was organized 3 or 4 years ago, was never recognized by the State. Well, it did finally get organized and got State approval in 1985. So, it never had an opportunity to come online. However, it has reviewed all of the documentation that has been submitted by Mineral County and the Walker Lake Tribe. And the purpose of this statement is supportive of both of those.

And the authority's position on this stems from the simple terms of the fact that again, title II of the California-Nevada compact, which addresses the Walker River basin, omits clearly defined boundaries of the Walker River basin and fails to recognize the adverse impacts on the lake and the region by omitting the allocation of water rights to Walker Lake. If the lake isn't defined, then the lake can't get any water, even though we say there is somebody on the committee that represents the water rights that have been given to the lake.

Mr. **Taylor**. Do you have any explanation for why the Walker Lake was excluded from the compact?

Mr. **Lybarger**. All we know is what we have read in it Mr. Chairman. We looked specifically at the maps, and on page 25 of title II of the compact, it defines the Walker River basin very ambiguously and inadequately, by stating that it is either at the junction of the lake and Walker River, which is at the north end of the lake, or at tier 10 north, Mount Diablo baseline. And this is not topographically accurate at all.

Mr. **Taylor**. Well, we have had two witnesses here today that seem to have been present at the beginning: Mr. Bolton Minister and Mr. Girard. So, I think that is one of the questions that we will be getting back to you all on.

Mr. **Lybarger**. That line, tier 10 north, goes right through about a mile down the river from the junction of the river and the lake. And the lake is another 20 miles long, all the way down to tier 8, as I recall. So, that is the main thing, the Central Nevada Development Authority would be supportive of both Mineral County and the tribe—until the lake is defined, it is not a part of the basin as far as the compact is concerned.

Now, you can argue all you want to about all the rights that have been given by decree C-125, and everything else. If the lake isn't in there, it is not going to get any water. And the representative, who sits on the commission, can't give any water to the lake because the lake isn't a part of the basin.

Mr. **Taylor**. It seems like a strange omission and we will certainly try to find out why, if that appears that way.

Mr. **Lybarger**. Yes, sir. Fundamentally, that is all I have to say, Mr. Chairman.

[In regard to the above colloquy, the following letter dated October 7, 1985, was received from Mr. Minister:]

October 7th, 1985
Yerington, Nevada

1985 OCT 11 AM 9 38

Mr. Peter Taylor
Majority Staff Director
Select Committee on Indian Affairs
838 Hart Building
Washington, D. C. 20510

Subject: S.1558, A Bill to settle certain claims affecting the Pyramid Paiute Indian Tribe of Nevada, and for other purposes.

Dear Mr. Taylor:

During the hearings held October 2, 1985, on subject Bill, you requested that by letter, for inclusion in the hearing record on the Bill, I inform you why the definition of the "Walker River Basin" did not include Walker Lake.

The definition of the Walker River Basin was negotiated between California and Nevada and the point at which Walker River and Walker Lake meet was made a part of the limit of the Basin for the following reasons:

A. To exclude from inter-state allocation the waters of those streams (largely intermittant) that arise in Nevada and flow directly into Walker Lake, and are not contributory to the Walker River.

    1. The most important of these streams has been developed by the United States Navy for domestic use on Naval Ammunition Depot, Hawthorne, Nevada. Involvement of the Department of Defense in inter-state allocation was not necessary.

B. To allow California the use of its allocation of "unused waters" as defined by Compact free from assertion of future claims of Walker Lake.

    1. "Unused waters" by definition is a very small part of the Walker River waters. Engineering studies indicate a conservation yield of 12,000 to 16,000 acre feet of water per year, depending on the number and location of storage facilities, and their operational criteria, thus indicating at best a California yield of "unused water" of 4,200 to 5,600 acre feet per year. Lacking a Compact, California likely would use more of the Walker River waters than this. In this event an inter-state suit instigated by Nevada with her limited

financial resources against California with her large resources would appear to be very damaging to Nevada in terms of financial impact.

C. California does not care how Nevada uses its allocation of "unused waters". The Nevada Legislature passed the Compact legislation in 1971, and the Nevada State Engineer's water right determinations have been bound by the Compact since this time. In 1972 when Mr. R. Westergard, a person most familiar with Compact terms, was Nevada State Engineer, a permit was issued for fisheries use of Walker River water in Walker Lake. In 1984 this water right was certificated. The definition in the Compact has not and will not restrict by definition the use of the Nevada allocation to the exclusion of Walker Lake.

Thank you for the opportunity to add to the record of testimony heard on S.1558.

Sincerely,

Bolton F Minister

Bolton F. Minister
55 East Tognoli Lane
Yerington, Nevada 89447

Copies: Mr. Roland Westergard
Mr. LeRoy Arrascada
Walker River Irrigation District

Mr. LYBARGER. I might mention—let me make one more statement here. In summary, in closing, CNDA reiterates its strong and complete support of the testimony presented by both the Walker Lake Paiute Tribe and Mineral County.

These positions have been presented to the appropriate State agencies for consideration and corrective action. The course of events that led to the presentation of S. 1558 and H.R. 3213, to these committees without correcting the errors or ommissions that exist in the bill, leaves us no alternative but to appeal our position to the Federal level, for needed amendments prior to the passage.

Among these amendments should be a guaranteed sum of money allocated to Mineral County to purchase upstream water rights for Walker Lake. And we would be willing to jointly see that those would be jointly shared with the Fish and Game Commission. The State of Nevada has seen fit to allocate not only water, but funds to the Pyramid Lake for the propogation and perpetuation of the cutthroat, and Walker Lake is the natural habitat.

The residents of Mineral County are justified in arguing strongly for equal treatment, and CNDA supports them wholeheartedly. This is not to be construed to be critical of those actions contained in the Senate and House bills, but to request consideration of amendments to the two bills before passage which will ensure the preservation of Walker Lake, just treatment to all citizens of Nevada, and the protection of one of Nevada's most precious resources, one of three of the natural lakes that exist here.

We certainly express our appreciation, CNDA does, to the committee for hearing us.

[Mr. Lybarger's prepared statement, on behalf of the Central Nevada Development Authority, follows:]

**CENTRAL
NEVADA
DEVELOPMENT
AUTHORITY**

P.O. BOX 2330
HAWTHORNE, NEVADA 89415
(702) 945-3761

September 27th., 1985

Testimony of Mineral County, Nevada Commissioner, Robert C. Lybarger, representing the Central Nevada Development Authority to the Senate Indian Affairs Committee on October 2nd., 1985 and to the House of Representatives Interior and Insular Affairs Committee on October 3rd., 1985, on hearings relative to the Pyramid Lake Paiute and Truckee River Settlement Act of 1985, referred to as S.B. 1558 and H.R. 3213.

Mr. Chairman, Honorable Members of the Committee. I am Mineral County, Nevada Commissioner, Robert Lybarger from Hawthorne, Nevada. As a member of the Board of Mineral County Commissioners, I am duly elected by the Board to represent Mineral County to the Central Nevada Development Authority Governing Board.

The Central Nevada Development Authority (CNDA) is an association of five counties in Nevada organized in 1983 and chartered in 1985 by the State of Nevada by an Inter-local agreement to which all five counties are signatories. I have appended a map of Nevada to this testimony which outlines the boundaries of the counties of Mineral, Nye, Eureka, White Pine and Lincoln. The Inter-local agreement has been signed by the Boards of County Commissioners of all five counties representing a population of approximately 37,000 people. The boundaries of the authority encompasses nearly one-half of Nevadas' land area, is comprised of nearly one-third of the 17 counties of the state and extends across the state from its boundary with California all the way to the Utah state line. From the southern tip of Nye County to the northern boundary of Eureka County, it covers over two-thirds of the length of the state.

The major purpose of the Authority in cooperation with the State Commission on Economic Development is to improve the economic health of the entire region by promoting and sponsoring programs designed to attract industry and tourism and to create economic diversification and thereby economic security for the citizens of the entire area.

In this endeavor, CNDA has reviewed S.B. 1558 and H.R. 3213 and has elected to make this statement relative to the disasterous impacts that passage of the bills in their present form would have not only on Mineral County, but on the economic health of the entire region.

The authority's position on this issue stems in simple terms from the fact that Title II of the California-Nevada Compact which addresses the Walker River Basin, omits clearly defined boundaries of the Walker River Basin and fails to recognize the adverse impacts on the lake and the region by omitting the allocation of water rights to Walker Lake.

In establishing this position, CNDA has thoroughly reviewed the testimony of the Walker Lake Paiute Tribe and that of the Board of Mineral County, Nevada Commissioners and is entirely supportive of the opposition which has been presented by both panels of witnesses. The reasons for this support by CNDA are detailed in the following paragraphs.

Definitions:

On page 25 of Title II of the California-Nevada Interstate Compact, which defines the "Walker River Basin", there is an inadequate and ambiguous representation of Walker Basin as it relates to the Walker Lake. This is a failure of the compact to recognize a natural geographic feature which has existed since the demise of the ice age. The error in defining the limits of the lake at the intersection of the Walker River and the lake and/or at Tier 10 North, Mount Diablo Base Line is not only in violation of topographical accuracy but would surely instigate costly and lengthy litigation to have the error corrected. The definition must be legally accurate by stating the exact boundaries to the existing southern extent of the lake at Tier 8 North, Mount Diablo Base Line and eliminating references to the intersection of the river and the lake and Tier 1 North.

Now it is CNDA's understanding that the failure to recognize Walker Lake was agreed upon so that California, by not recognizing the lake as a claimant would have the right to claim "unused" water upstream. That unused water which could be used to sustain levels at Walker Lake would then be used to promote the economic health of California's depressed communities and in particular would be diverted to replenish Mono Lake which the Los Angeles Water and Power Authority has already destroyed. Hawthorne, Nevada was established on the shores of Walker Lake in 1881 and by historical and traditional use and later reliance on the lake as a beneficial user for tourism has earned prescriptive rights to that water that pre-dates subsequent court and state engineer allocations for agricultural and other uses. The rationale to destroy Walker Lake by refusing to recognize its geographical existance and at the expense of regenerating a lake that has already been destroyed is one which this committee must overrule in the interest of not only the region represented by CNDA, but to the preservation of the nations' integrity as a whole. We must not stand by and see our resources exacerbated in this manner. CNDA will be supportive of S.B. 1558 and H.R. 3213 only when the correct geographical boundaries of Walker Lake are written into the compact.

Allocations:

As has already been stated, the purpose of the compact is to resolve litigation and to establish water rights for the basins described in the compact. To do this, a commission has been established by the compact and Nevada representatives shall be (page 28, Title 2) " a resident real property owner within and represent the Walker River Basin in Nevada...".

Since Walker Lake lies wholly in Mineral County and is not defined as a part of the Walker River Basin, even those residents of Mineral County living on the shores of Walker Lake, as well as residents of Hawthorne, Mineral County and CNDA will not have a voice in the allocation of water to Walker Lake. Only those residents and users upstream from Walker Lake will have a voice in the allocation of water. By this definition and by the other defined representatives, even the Nevada Department of Wildlife, which has water rights at Walker Lake for the preservation and propogation of wildlife on the lake will not have a voice in the allocation of water to the lake.

CNDA envisages the eventual demise of the lake, particularly during dry years when available water is less than allocated water during which times there is not even a state agency having water rights on the lake represented on the commission to protect the interests of the Walker Lake is a regional economic base and tourist attraction bringing potential land owner and thousands of tourist annually crossing Nevada from all directions. The importance of recognizing Walker Lake and providing regional representation on the Allocation Committee cannot be overemphasized. In this respect, CNDA argues strongly for an amendment to the compact which will provide for the Nevada Wildlife agencies to jointly share and own with Mineral County all waters allocated by the State Engineer to Walker Lake and that the representative to the commission be an individual who represents all interests on the lake from residents, fish and game and to include the entire region which might adversely suffer impacts from loss of water to the lake.

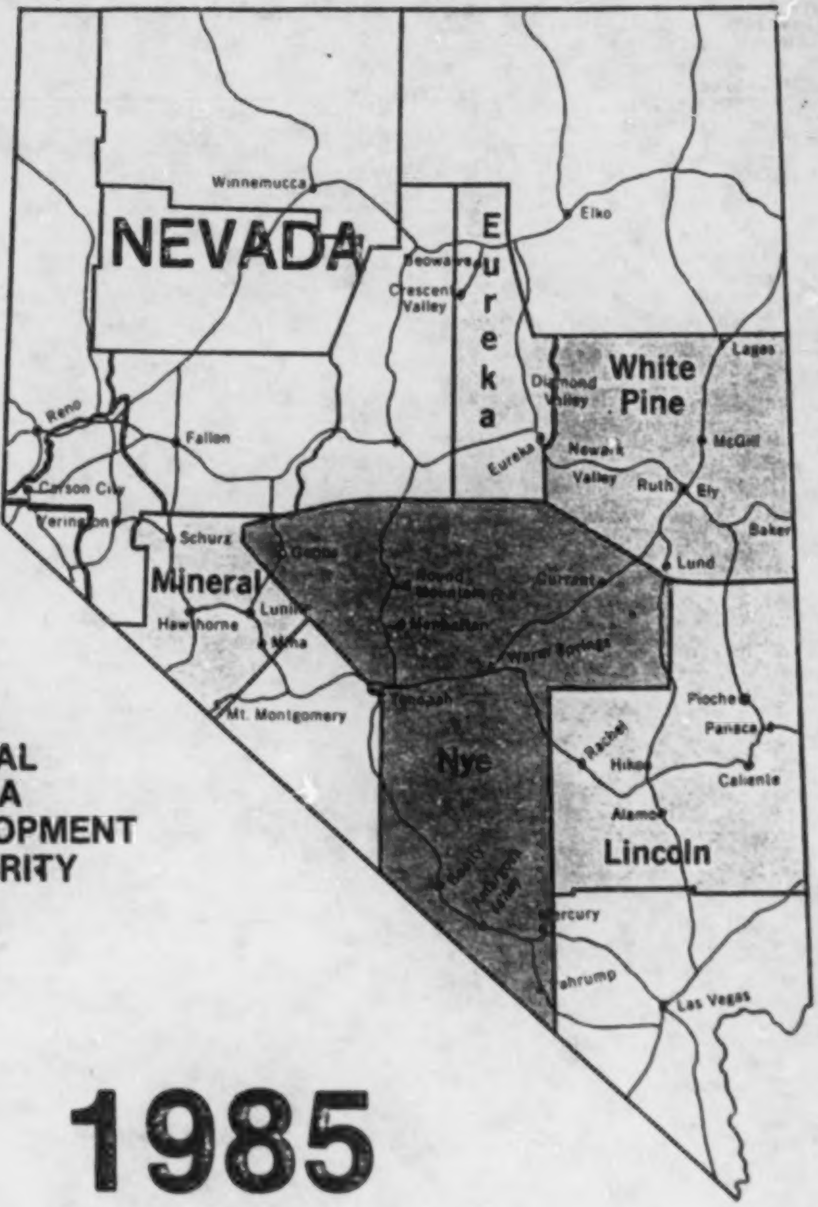
Environmental Impacts:

CNDA maintains an active interest in the ecological aspects of the region. Walker Lake has long been a habitat of the cutthroat trout and numerous species of other forms of wildlife. The continued existence of the cutthroat trout is dependent upon a flush of fresh water when during the early part of each year the melting snows provide a critical element to the spawning of this species. The California-Nevada Compact as written does not recognize and does not make any provisions for this critical aspect of protection for endangered species of the Walker Lake region.

In addition, the loss of water to the lake allowing for the shore lines to recede will significantly impact climatic conditions which will adversely impact human comfort and existence in the Mineral County area. The lake acts as a balancing force to the humidity in the area and the moisture is critical to sustaining numerous species of plant life which when lost will result in the loss of vegetation which is critical to soil stability and erosion control from both winds and flash flooding. Without these climatic control features, the region surrounding Walker Lake could become uninhabitable causing further loss of population and economic depression of far reaching consequences to the CNDA region.

Summary:

As previously stated, CNDA in addition to these and for numerous other reasons opposes the passage of S.B. 1558 and H.R. 3213 in its present form. In closing, CNDA reiterates its strong and complete support of the testimony presented by both the Walker Lake Paiute Tribe and that of Mineral County. These positions have been presented to the appropriate state agencies for consideration and corrective action. The course of events that have led to the presentation of S.B. 1558 and H.R. 3213 to these committees without correcting the deficiencies that exist in the bills leave us no alternative but to appeal our position to the federal level for the needed amendments prior to passage. Among those amendments should be a guaranteed sum of money allocated to Mineral County to purchase upstream water rights for Walker Lake. The State of Nevada has seen fit to allocate not only water but funds to Pyramid Lake. The residents of Mineral County are justified in arguing strongly for equal treatment and CNDA supports them wholeheartedly. This is not to be construed to be critical of those actions contained in the Senate and House Bills, but to request consideration of amendments to the two bills before passage which will insure preservation of Walker Lake, just treatment to all citizens of Nevada, and protection of one of Nevadas' most precious resources, one of its three natural existing bodies of water. CNDA wishes to express its deepest appreciation to the Senate and House Committees for this opportunity to testify on the bills prior to final action. We deeply appreciate your favorable consideration to the requests contained herein. Thank you from all of CNDA.


NEVADA
Winnemucca
Elko
Beowawe
Crescent Valley
Eureka
Diamond Valley
White Pine
Lages
McGill
Newark Valley
Ruth
Ely
Baker
Lund
Reno
Fallon
Carson City
Yerington
Schurz
Gabbs
Mineral
Luning
Hawthorne
Mina
Round Mountain
Manhattan
Currant
Warm Springs
Tonopah
Mt. Montgomery
Eureka
Nye
Pioche
Panaca
Rachel
Hiko
Caliente
Alamo
Lincoln
Beatty
Amargosa Valley
Mercury
Pahrump
Las Vegas

CENTRAL NEVADA DEVELOPMENT AUTHORITY

1985

Mr. TAYLOR. Thank you all very much for your testimony. And if we have followup questions we will get back to you; in the meantime, you might want to follow that up with Mr. Girard.

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. TAYLOR. I would like to call Mr. Brian Wallace, vice chairman of the Washoe Tribe of Nevada and California, and Mr. Michael Hughes, the tribal planner.

STATEMENT OF A. BRIAN WALLACE, VICE CHAIRMAN, WASHOE TRIBE OF NEVADA AND CALIFORNIA

Mr. WALLACE. My name is Brian Wallace, and I am the vice chairman of the Washoe Tribe of California and Nevada. The Washoe Tribe of Nevada and California supports the efforts of the Pyramid Lake Paiute Tribe to resolve the many difficulties it has faced over the years in trying to maintain a fair and reasonable access to water, to which the tribe has a legal and historical right.

However, the Washoe Tribe is strongly opposed to the California-Nevada Interstate Water Compact contained in section 201 of S. 1558. We have consistently opposed this compact for many years. The compact in its present form has been opposed by the Department of Interior, acting in its capacity as trustee for the Indian tribes since at least 1969. We do not believe that the concerns of the Department, as they affect the Washoe Tribe, have changed.

Our concerns with the provisions discussed below is that the intent with respect to jurisdiction on Indian Lands is unclear. We believe that the intent of Congress with respect to the jurisdiction over Indian lands should clearly indicate that such jurisdiction is reserved by the Federal Government.

We object to the creation of a California-Nevada Compact Commission. The commission will represent the interests of the two States, but will be empowered to make decisions that may impact on the water rights of the five tribes in the three river basins.

According to officials in the State of Nevada, the interests of the tribes will be represented on a commission by the Nevada State engineer. This arrangement will result in neither an objective representation nor effective advocacy for the rights and interests of the Washoe Tribe.

The Federal representative will be a powerless, nonvoting ex-officio member of the commission. The Washoe Tribe does not wish to be represented on the commission. It is in the best interests of the tribal government to remain separate and apart from an instrument of two State governments.

In paragraph 6 of article 4(d), it provides the commission with the power to require water users to install and maintain water measuring devices. The intent of Congress should be clarified to indicate that this provision does not apply on Indian lands.

Article 4(d), paragraph 9, permits the commission the right of access to all properties in the four river basins. We believe that Congress should clarify that this provision does not apply to Indian lands.

Paragraph 11 of the same article provides the commission with subpoena powers that are greater than that of Federal District courts. We realize that the intent of the drafters of the compact was to enable the commission to subpoena Federal officials in Washington, DC. We feel Congress should clarify this provision to ensure that the commission does not attempt to serve subpoenas on Indian lands, or against tribal elected officials, employees, members, or representatives.

The specific problems discussed above are exacerbated by the vague and broad powers provided by the compact to the commission in paragraphs 4 and 10 of article 4.

We are especially concerned about the emergency powers provided in article 4(e) on page 35 of the bill. The term "emergency" is not defined, and the specific actions of the commission seem to have no procedures for accountability to the public. Congress should clarify its intent that the existence of an emergency does not provide the commission with the power to alter the allocations of water provided to the Washoe Tribe under the *Alpine* decree, or to change the terms of the decree, or effect a disposition that all water resources on the Washoe Reservation.

In addressing article 10, which provides for interbasin transfers to use, the exchange of water, provided in line 9, should be clarified to specify that all exchanges of Carson River water should be consistent with the *Alpine* decree.

Addressing article 18, the Washoe Tribe should be exempted from the definition of "persons" on line 2 on page 66. The Washoe Tribe should not be subject to the jurisdiction of the commission which is an instrument of the State Government.

Article 20, we are particularly concerned about the Recourse to Courts article. If the occasion arises that the Washoe Tribe needs to seek judicial relief in Federal courts, the tribe should not be required to first submit its concerns to the commission review process. Congress should clarify this article to specify that the water rights of the Washoe Tribe do not come under the jurisdiction of the commission, but remain under the jurisdiction of the Federal District Court according to the provisions of the *Alpine* decree.

Article 21 on page 68 contains a disclaimer that nothing in the compact shall be construed as affecting the obligation of the United States to the Indians and Indian tribes, or any right owned or held by or for the Indians or Indian tribes which is subject to the jurisdiction of the United States. That disclaimer is directly contradicted by paragraph 3 of article 22 on page 69, which makes specific provisions of the compact binding on the Federal Government.

We feel that Congress should clarify the meaning of the term "wards" on line 7 of page 69. The definition of "wards" should not include Indian tribes, Indian people, or individual Indians.

Article 22 makes all of article 7, the Carson River Basin, binding on the Federal Government. The Washoe Tribe believes that its allocations of water are clearly established in the *Alpine* decree. We oppose any efforts or intentions to change those allocations without our consent.

The limitations on the rate of water use contained in article 7(b) on page 45 should not apply to the Washoe Tribe. The language in that paragraph envisions ditch irrigation. The Washoe Tribe uses a pumping system. The *Alpine* decree recognizes the individual pumps.

On line 8 of page 46, the words should read under the jurisdiction of applicable court decree. Article 7(d) envisions additional yields of the Carson River water. The *Alpine* decree, on page 1, under the findings of fact states that the waters of the Carson River and its tributaries are fully appropriated. The intent of Congress should be clarified to define additional yields and to resolve the differences between the compact and applicable court decrees.

In addressing our final concerns, the compact was enacted by the legislatures of California and Nevada prior to the enactment by the Federal Government of major environmental policies. We are concerned that the compact does not address Federal policies regarding water quality or endangered species.

I think one thing we would like to do is to make some possible recommendations. The Washoe Tribe does not wish to obstruct the important and historical resolution of serious water issues on the Truckee River. While we are aware that the negotiations between the Pyramid Lake Paiute Tribe and other parties would probably result in proposed legislation, we were surprised to see the compact attached to the bill.

While the Washoe Tribe believes that the compact should be removed from the bill, we do not want to jeopardize the agreements arrived at after extensive and difficult negotiations. Instead, we wish to offer constructive recommendations that will mitigate the most potentially harmful impacts of the compact on the water rights and interests of the Washoe Tribe of Nevada and California.

These recommendations basically fall in two specific areas, the first of which is clarification of congressional intent. We recommend that a section 204 be added to title II of the bill to read:

> Notwithstanding any other provisions of this title, the Federal Government hereby reserves jurisdiction for, and on behalf of, the Washoe Tribe of Nevada and California with respect to all water rights, all water claims, and all allocations of water as decreed in *United States* v. *Alpine Land & Reservoir Co.*, as trustee for the Washoe Tribe of Nevada and California.

This will protect the rights of the Washoe Tribe without requiring a change in the content of the compact itself, which is contained wholly in section 201. This amendment will also protect the status of the Federal Government as trustee for the lands and natural resources of the Washoe Tribe.

The second area of recommendations addresses committee report language. We further recommend that the language be included in the reports of the Senate Committee on Indian Affairs and the House of Representatives Committee on Interior Affairs to clarify the intent of Congress that articles 4, 18, and 20 do not empower the commission to exercise jurisdiction on Indian lands.

Language should be included to clarify that the *Alpine* decree establishes the allocations of water for the Washoe Tribe, and that no action of the commission shall in anyway change those allocations or affect the Washoe Tribe's use of those allocated waters and the other water resources without the express consent of the tribal governing body.

In summary, the Washoe Tribe in Nevada and California endorses—Department of the Interior in relationship to impose adverse impacts manifested in S. 1558. It is our intention to compel the U. S. Congress to endorse the Washoe Tribe's efforts to seek a clear definition of intent and establishing an authority of the proposed bistate commission.

There is also intention to pursue possible exemption from provisions of title II of this bill, particularly through the adjudication of Carson River as determined and decreed in *United States* v. *Alpine Land Reservoir Co.*

Furthermore, it is the Washoe Tribe's desire that this committee recognize the reasonableness and constructive measures taken by tribal representatives in our efforts to accomodate all interests involved. And as vice chairman, it is my duty to protect and preserve the Washoe Tribe's ability to administer the efficient and beneficial disposition of its water resources, the ability to create our own future, and address the purposes for which the Washoe Indian Reservation was created.

We truly appreciate the opportunity to personally express our concerns before this committee, and we thank you for your interest and future action of S. 1558.

Thank you.

Mr. TAYLOR. Thank you very much, Mr. Wallace.

[Mr. Wallace's prepared statement, on behalf of the Washoe Tribe of Nevada and California, and additional material pertinent to the hearing, follow. Testimony resumes on p. 570.]

TESTIMONY
of
THE WASHOE TRIBE OF NEVADA AND CALIFORNIA
on
THE PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT OF 1985

I. INTRODUCTION

My name is A. Brian Wallace. I am the Vice-Chairman of the Washoe Tribe of Nevada and California.

The Washoe Tribe of Nevada and California supports the efforts of the Pyramid Lake Paiute Tribe to resolve the many difficulties it has faced over the years in trying to maintain a fair and reasonable access to water to which the tribe has a legal and historical right.

However, the Washoe Tribe is strongly opposed to the California-Nevada Interstate Compact, contained in Section 201 of the bill. We have consistently opposed this Compact for many years. The Compact in its present form has been opposed by the Department of Interior, acting in its capacity as trustee for the Indian tribes, since at least 1969. We do not believe that the concerns of the Department, as they affect the Washoe Tribe, have changed.

After providing specific comments on our concerns with the Compact, we wish to offer recommendations for resolving those concerns. We hope that these recommendations will be carefully considered by this Committee.

II. SPECIFIC CONCERNS WITH THE COMPACT

Our concern with the provisions discussed below is that intent with respect to jurisdiction on Indian lands is unclear. We believe that the intent of Congress with respect to jurisdiction over Indian lands should clearly indicate that such jurisdiction is reserved by the federal government.

Article IV

We object to the creation of the California-Nevada Compact Commission. The Commission will represent the interests of the two states, but will be empowered to make decisions that may impact on the water rights of the five tribes in the three river basins.

According to officials of the State of Nevada, the interests of the tribes will be represented on the Commission by the Nevada State Engineer (page 28). This arrangement will result in neither objective representation nor effective advocacy for the rights and interests of the Washoe Tribe.

The federal representative will be a powerless, nonvoting, ex-officio member of the Commission (page 27). Even if objections to negative impacts on Indian tribes' water rights were raised by the federal representative, that representative would be powerless to influence the decisions of the Commission.

The Washoe Tribe does not wish to be represented on the Commission. It is in the best interests of the tribal government to remain separate and apart from an instrument of the two state governments.

Paragraph 6 of Article IV.D. provides the Commission with the power to require water users to install and maintain water measuring devices (page 33). The intent of Congress should be clarified to indicate that this provision does not apply on Indian lands.

Article IV.D. paragraph 9 permits the Commission the right of access to all properties in the four river basins (page 34). We believe that Congress should clarify that this provision does not apply to Indian lands.

Article IV.D. paragraph 11 provides the Commission with subpeona powers that are greater than that of federal district courts (page 34). We realize that the intent of the drafters of the Compact was to enable the Commission to subpeona federal officials in Washington, DC. Congress should clarify this provision to ensure that the Commission does not attempt to serve subpoenas on Indian lands, or against tribal elected officials, employees, members or representatives.

The specific problems discussed above are exacerbated by the vague and broad powers provided by the Compact to the Commission in paragraph 4 (page 33) and paragraph 10 (page 34) of Article IV.

We are especially concerned about the "emergency" powers provided in Article IV.E. (page 35). The term "emergency" is not defined, and the specific actions of the Commission seem to have no procedures for accountability to the public. Congress should clarify its intent that the existence of an emergency does not provide the Commission with the power to alter the allocations of water provided to the Washoe Tribe under the Alpine Decree, or to change the terms of the Decree.

Article X

Article X provides for Interbasin Transfers of Use (page 61). The exchange of water, provided for in line 9 should be clarified to specify that all exchanges of Carson River water should be consistent with the Alpine Decree.

Article XVIII

The Washoe Tribe should be exempted from the definition of "persons" on line 2 of page 66. The Washoe Tribe should not be subject to the jurisdiction of the Commission, which is an instrument of the state governments.

Article XX

We are particularly concerned about the "Recourse to Courts" article (page 67). If the occasion arises that the Washoe Tribe needs to seek judicial relief in federal courts, the Tribe should not be required to first submit its concerns to the Commission for review. Congress should clarify this article to specify that the water rights of the Washoe Tribe do not come under the jurisdiction of the Commission, but remain under the jurisdiction of the federal district court according to the provisions of the Alpine Decree.

Article XXI

Article XXI on page 68 contains the disclaimer that nothing in the Compact shall be construed as:

> A. Affecting the obligations of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

That disclaimer is directly contradicted by paragraph 3 of Article XXII on page 69, which makes specific provisions of the Cmpact binding on the federal government.

Article XXII

Congress should clarify the meaning of the term "wards" on line 7 of page 69. The definition of "wards" should not include Indian tribes, Indian people or individual Indians.

Article VII

Article XXII makes all of Article VII, "Carson River Basin," binding on the federal government (pages 42-47). The Washoe Tribe believes that its allocations of water are clearly established in the Alpine Decree. We oppose any efforts or intentions to change those allocations without our consent.

The limitations on rate of water use contained in Article VII.B. on page 45 should not apply to the Washoe Tribe. The language in that paragraph envisions ditch irrigation. The Washoe Tribe uses a pumping system. The Alpine Decree recognizes individual pumps.

The words "under applicable state law" on line 8 of page 46 should instead read "under the applicable court decree."

Article VII.D. envisions "Additional yields" of Carson River water (page 46). The Alpine Decree, on page 1, under Findings of Fact, states that the waters of the Carson River and its tributaries are fully appropriated. The intent of Congress should be clarified to define "additional yields," and to resolve differences between the Compact and applicable court decrees.

III. CONCERNS WITH TITLE I

The Washoe Tribe supports the initiative taken by the Pyramid Lake Tribe to resolve very difficult water concerns with other water users in the Truckee River Basin. However, we do have several concerns with Title I as they affect the Washoe Tribe (page 21).

Section 110

The Damages provided for in Section 110 of the bill should be appropriated separately by Congress for this purpose. The sums of $7 million per year should not be taken out of Bureau of Indian Affairs funds appropriated for other purposes.

Section 111

Section 111 of cancels all repayment obligations of the Truckee-Carson Irrigation District (TCID) owed to the United States government. According to the Carson City District Office of the Bureau of Reclamation, the irrigation district owes the taxpayers at least $1,493,000 and perhaps more. The exact figure should be specified in the bill.

Perhaps in this time of fiscal austerity, Congress should seriously consider whether the federal government can afford to forego this revenue. The savings to the TCID from having the pending lawsuits dropped should enable it to fully repay this obligation.

IV. ENVIRONMENTAL CONCERNS

The Compact was enacted by the legislatures of California and Nevada prior to the enactment by the federal government of major environmental policies. We are concerned that the Compact does not address federal policies regarding water quality or endangered species.

V. WASHOE TRIBE RECOMMENDATIONS

The Washoe Tribe does not wish to obstruct the important and historical resolution of serious water issues on the Truckee River. While we were aware that negotiation between the Pyramid Lake Paiute Tribe and other parties would probably result in proposed legislation, we were surprised to see the Compact attached to the bill.

While the Washoe Tribe believes that the Compact should be removed from the bill, we do not want to jeoparize the agreements arrived at after extensive and difficult negotiations. Instead, we wish to offer constructive recommendations that will mitigate the most potentially harmful impacts of the Compact on the water rights and interests of the Washoe Tribe.

Clarification of Congressional Intent

We recommend that a Section 204 be added to Title II of the bill to read:

> Notwithstanding any other provision of this Title, the federal government hereby reserves jurisdiction for, and on behalf of, the Washoe Tribe of Nevada and California with respect to all water rights, all water claims, and all allocations of water as decreed in United States v. Alpine Land & Reservoir Co., Civ. No. D-183 BRT (D. Nev.), as trustee for the Washoe Tribe of Nevada and California.

This will protect the rights of the Washoe Tribe without requiring a change in the content of the Compact itself, which is contained wholly within Section 201. This amendment will also protect the status of the federal government as trustee for the lands and natural resources of the Washoe Tribe.

Committee Report Language

We further recommend that language be included in the Reports of the Senate Committee on Indian Affairs and the House of Representatives Committee on Interior Affairs to clarify the intent of Congress that Articles IV, XVIII and XX do not empower the Commission to exercise jurisdiction on Indian lands. Language should be included to clarify that the Alpine Decree establishes the allocations of water for the Washoe Tribe, and that no action of the Commission shall in any way change those allocations or affect the Washoe Tribe's use of those allocated waters, without the express consent of the tribal governing body.

A. Brian Wallace, Vice-Chairman
WASHOE TRIBE OF NEVADA AND CALIFORNIA
919 Highway 395 South
Gardnerville, NV 89410

702-265-4191

Our position with regard to the Indian water rights is predicated upon the principles enunciated in Winters v. United States, 207 U.S. 564 (1908), and in Arizona v. California, 373 U.S. 546 (1963). We consider that all waters from Lake Tahoe and the Truckee River system other than waters (1) appropriated by the United States for such other purposes as the Newlands project or (2) adjudicated to third parties in litigation to which the United States was a party, as in United States v. Orr Water Ditch Co., et al, Nev. Equity No. A-3, D.C. Nev., September 8, 1944, are reserved for present and future development of the Pyramid Lake Indian Reservation.

From the viewpoint of regional and national interest, the recreational development now underway in the Lake Tahoe area should be continued as the draft compact contemplates, to the extent this can be accomplished without imperiling Pyramid Lake. The maximum 50,000 acre-feet set aside by the draft compact for diversion upstream of the California state line for California use in the Upper Truckee River and for Lake Tahoe uses in both states should not prove a substantial loss to Pyramid Lake. About a third of the 50,000 acre-feet represents already existing uses which would almost certainly be recognized in any Winters' doctrine suit. Some substantial part of the diversions will be returned to the river, presumably after treatment in accordance with applicable water quality standards. Even the complete loss of 50,000 acre-feet would leave an average annual flow into Nevada of 450,000 acre-feet and would also leave available for Pyramid Lake the periodic great flows. There is also an advantage to Pyramid Lake in the setting of a ceiling on the Lake Tahoe and Upper Truckee uses.

Preliminary findings of studies regarding Pyramid Lake which we are conducting are as follows. First, Pyramid Lake is a recreation resource of national significance because of its large area and the recreation, sport fishing, aesthetic, geologic, ecologic, archeologic and historic values it provides. Second, the lake offers greater potential high quality water recreation for large numbers of users than any other lake in Northern Nevada or California, particularly in light of the unique opportunity for optimum recreation development afforded by the Pyramid Lake Indian Tribe's single ownership of the lake and most of its environs. Third, we believe that the recreation potential of the lake is imperiled gravely by the current decline in level due to upstream diversions and uses and prospectively by further decreased inflow if new upstream facilities on the Truckee River should be developed to hold back and divert for other purposes the

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Dear Mr. Zwick: JAN 14 1969

This responds to your request for the views of this Department on the draft California-Nevada Interstate Compact concerning waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins.

We recommend that the Federal Government oppose the draft compact as it stands for the reasons stated below, including most particularly its adverse effect on Pyramid Lake. We believe, however, that a revised compact, acceptable to the United States, California and Nevada, can be negotiated and we recommend that the Federal Government now propose such negotiations.

As noted in a letter of August 1, 1968, to Mr. R. Riter, Federal Representative on the Compact Commission, from the Chairman of the California Commission and the Chairman of the Nevada Commission, the United States owns or controls virtually all the storage and diversion facilities on the Truckee and Carson Rivers and at Lake Tahoe. The rights of the United States on the Truckee River include the right to store water in Lake Tahoe between certain levels (described in the discussion of article V below) and the right to irrigation water for the Newlands project. On the Carson River the rights of the United States effectively preempt the flow of the river as of 1902. The United States supports the Winters' doctrine claim of the Pyramid Lake Tribe to Truckee River waters.

The compact goes beyond the usual function of allocating water between party states and purports to bind the Federal Government both as a sovereign and as trustee for Indians. Specifically, paragraph (3) of article XXII provides, among other things, that the compact shall become effective only when Congress has agreed that certain provisions of the compact "shall be binding on the agencies, wards, and instrumentalities of the United States of America." Most seriously affected would be the Winters' doctrine rights of the Pyramid Lake Indians. Because of these rights, we believe the United States should not consent to the draft compact as it stands, but should use the opportunity to renegotiate the compact so as to place the Indians in the best position to succeed in the proposed Winters' doctrine litigation.

heavy spring runoffs which the lake now receives. Therefore, we propose negotiation of a revised compact which, together with a resolution of the other difficulties discussed herein, contains a recognition of the right of the United States to proceed with the Winters' doctrine litigation and the corresponding duty of all parties to be bound by the results of that litigation.

We hope to conclude in the near future studies which will show more clearly the relationship of Lake Tahoe and Upper Truckee River uses to maintenance of the level of Pyramid Lake. Even if the studies compel a modification of our position, we believe that negotiation of an acceptable compromise may be possible.

A brief description of the substantive provisions of the compact and their effect upon United States and Indian rights follows. A majority of the indicated problems could be resolved through negotiation.

Article I expresses the compact purpose to apportion between California and Nevada the water of the three rivers and Lake Tahoe.

Article II defines the terms used in the compact. The definition of the "Walker River Basin" should be modified to indicate that Walker Lake is in the Walker River Basin.

Article III contains general language with regard to "Sovereign Relationships."

Article IV establishes the composition, financing, procedure, and general powers of the Commission.

Article IV provides for one United States representative who shall be ex-officio chairman of the Commission without vote and who shall not be a domiciliary of or reside in either state. By reason of the substantial Federal interest in the area and the fact that the United States would be bound by the key provisions of the compact, the Federal representative should be a voting member of the Commission. In addition, the prohibition on domicile and residence appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured.

Article V deals with the allocation of water within the Lake Tahoe Basin. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of United States v. Truckee Carson General Electric Company, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

The major provision of article V permits total annual gross diversions of 34,000 acre-feet annually for use within the Lake Tahoe Basin, of which 23,000 acre-feet are allocated to California and 11,000 acre-feet are allocated to the State of Nevada. The allocation of 34,000 acre-feet is premised upon the construction of an overflow weir with a crest elevation of 6223 feet. The construction of such a weir would allow additional water to be developed from Lake Tahoe by enlarging the overflow cross-section of a present natural physical barrier above the outflow works which restricts the rate of flow between elevations 6225 and the low-water mark of 6223 feet. The lowering of the lake under the circumstances established in the compact would be allowable under the 1915 decree in which the United States acquired its storage rights in Lake Tahoe. In addition, recognizing that the construction of the weir may be some time later than the effective date of the compact, the states may use the same amount of water, 34,000 acre-feet, in the interim before the weir is actually built. Part of the 34,000 acre-feet is already being used within the basin.

Article VI of the compact allocates water of the Truckee River in the following order of relative priority as between the states. First, to Nevada the amounts provided for in the decree of United States v. Orr Ditch Company for irrigation on the Pyramid Lake Indian Reservation. Second, California is given the right to divert 10,000 acre-feet per year which may be stored when the flow in the channel of the Truckee River exceeds the so-called Floristan rate of 500 cubic feet per second. Current use under present rights is estimated at 8500 acre-feet. Under the 1915 decree some of the water in the Truckee River in excess of the Floristan rate of 500 c.f.s. is "reserved" water of the United States.

California would also receive 6000 acre-feet annually from the conservation yield of Stampede Reservoir. This would appear to recognize the allocation of water to California under the Washoe Project Act. After the water allocated to California has been developed, California also may develop additional yields of water in California subject to then existing beneficial uses in Nevada. The beneficial use so recognized in the compact for this purpose for the Pyramid Lake Indian Reservation would be the amount of water stated in the Orr Ditch decree for agricultural use plus such additional domestic or municipal water as may have been then developed. In order to obtain this water Pyramid Lake development would have to precede the future development in California.

This provision is unacceptable. We would want express recognition in the compact of the right of the tribe to litigate its Winters' doctrine claim for Truckee River water.

Article VII allocates the waters of the Carson River in the following order of priority between the states. First, to California, a right to divert water from the West Fork to irrigate an additional 5600 acres. California is also given the right to store 2000 acre-feet per year within Alpine County for supplemental use on presently irrigable land, such storage to be adverse to Lahonton Reservoir but subject to other existing uses within Nevada. Nevada is allocated a right to divert water to irrigate approximately 41,320 acres with a rate of diversion essentially predicated upon alleged existing uses. Each state may also store upstream of Lahontan in existing reservoirs to the extent of their existing capacity and priority. Finally, the Newlands project water rights are recognized, but as inferior to those previously mentioned.

Since 1925, in the case of United States v. Alpine Land Company, the United States has been attempting to establish on a firm judicial basis its storage and diversion right for Lahontan Reservoir in relation to pre-1902 upstream diversion rights. Under proposed findings in that case, the United States essentially would recognize the priority attached to 41,800 acres. The compact would increase the upstream acreage with rights ahead of the United States to 50,740 acres. The increase is not acceptable because it may make necessary greater diversions from the Truckee River for the Newlands project and so adversely affect Pyramid Lake. It is also better that negotiation to settle water rights in the Carson Basin be done within the framework of the Alpine Land Company case rather than in the proposed compact. Accordingly, the compact should be revised to accept the decision of the court in the Alpine Land Company case.

Article VIII allocates the water of the Walker River Basin recognizing, first, the rights established in decree C-125 in the case of the United States v. Walker River Irrigation District, 104 F. 2d 334 (1939). In that case, the Indian rights on the Walker River Indian Reservation were established at a continuous flow of 26.25 cubic feet of water per second during an irrigation season of 180 days for 2100 acres. It appears, however, from the report of the case, that irrigable lands within the Indian reservation amount to approximately 10,000 acres. The court in that case apparently was of the view that the acreage used to measure the reserved water right was the acreage historically shown to have been devoted to irrigated agriculture. The test applied was clearly more narrow than that used in Arizona v. California, 373 U.S. 546 (1963), where the court recognized the Indian right to water for all irrigable acreage within the reservation whether irrigated presently or not. Thus, under the Walker River decree, the Indian reservation has been allocated approximately one-fifth the amount of water to which it would have been entitled if the more generous test of Arizona v. California had been applied. We are, therefore, considering the possibility of reopening the Walker River case. Article VIII should be amended to recognize the right of the Indians to reopen the case, with all parties to be bound by the results.

Articles IX through XX deal with such other subjects as development of ground water and springs, interbasin transfers, suppression of evaporation, nonconsumptive uses and enforcement.

Article XIII states that the use of water for fish, wildlife and recreation is recognized as an inseparable part of the public interest and is beneficial. This is a step forward. However, it does not appear that the compact alone would ratify presently existing fish, wildlife and recreational uses of water which may have heretofore existed without benefit of state recognition. Only the groundwork, i.e., recognition as beneficial, is laid in the compact for further state procedures leading to a water right.

Article XXI purports to protect the rights of the United States. Paragraphs A through D, article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in the four basins which are the subject matter of the compact. However, article XXII, Ratification and Consent, an exception for which is contained in article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-references to other sections in the compact, the United States would be bound to still other provisions.

Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality. Thorough consideration should be given to the quality levels of the water allocated by the compact. For example, if Pyramid Lake is to be of significant value as a national recreation resource, special effort will be required to protect the quality of water flowing into it. We are concerned, therefore, that the exception from impairment of rights and powers of the United States under article XXI might affect existing authority to set and enforce water quality standards under the Federal Water Pollution Control Act, as amended.

We realize that the compact as presently drafted represents an attempt to resolve definitively most of the outstanding questions of interstate water allocation and use in Lake Tahoe and the three river basins. A less ambitious but worthwhile and attainable goal would be a revised compact which constitutes a framework for recognition of existing uses but is flexible enough to accommodate future resolution of remaining conflicting claims. We propose that the Federal Government oppose the compact as it stands, but that it enter into negotiations with the two state commissions as soon as possible to arrive at a compact which is substantially in accordance with the views of this Department and the other Federal agencies with a program interest in the area subject to the compact.

We suggest that the work of negotiation be made the responsibility of a special task force on which this Department, as well as the Department of Justice, should be represented. We would like to be consulted on the naming of the negotiators. We also would like an opportunity to participate in the drafting of instructions to the negotiators.

Sincerely yours,

(sgd) Stewart L. Udall

Secretary of the Interior

Hon. Charles J. Zwick
Director, Bureau of the Budget
Washington, D. C.

SEP 4 3 45 PM '85

August 29, 1985

Acting
Phoenix Area Director

Comments on S. 1558, a Bill "To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes."

Congressional and Legislative Affairs Staff, MC170

On August 1, 1985, S. 1558, a bill "To settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes" was introduced in the Senate. Concurrently, companion bill H.R. 3213, was introduced in the House of Representatives. You have asked our comments on S. 1558 and how it affects Nevada Indian Tribes. Our comments follow:

The Pyramid Lake Paiute Tribe negotiated Title I of this bill without Bureau of Indian Affairs involvement. It is recognized that a large measure of self-determination is current federal Indian policy. We do not wish to sound critical, however, we feel that there are many items in the bill that are detrimental to Pyramid Lake. We are aware that any negotiated settlement should be looked at as a total package and not with focus on specific parts. With that in mind we have few comments to make on Title I. We would point out that settlement proposals of Title I are inconsistent with some language of Title II. When the two titles are combined, as S. 1558 has done, we believe that the bill negatively impacts the western Nevada Indian community and the Secretary of Interior.

The bill purports to protect and provide such measures that the Lahontan cutthroat trout and cui-ui will eventually be delisted from the threatened and endangered species listing. Careful reading of the bill results in our conclusion that the survival of the two species is not assured by this legislation. Additionally, instream flows critical for spawning and nursery habitat, are not addressed. Eutrophication of Pyramid Lake is a current concern because of Reno-Sparks sewage control problems and yet water quality is not addressed in the bill. While large amounts of money are itemized in the bill to be appropriated and placed in specific treasury accounts for use by the Pyramid Lake Paiute Tribe, there are insidious references to the Secretary of Interior being liable for several millions of dollars per year in damages if certain listed items are not accomplished. Those damage dollars we presume would come from BIA annual appropriations.

Title I

Page 5, Line 10. "By Period" is a typographical error; it should read "Dry Period"

Page 7, Line 9-12. Wording can be interpreted more than one way. Possible satisfactory language is: "In any two year period the level of the Pyramid Lake water surface shall not drop below elevation 3,786 feet above mean sea level measured at the end of each water year beginning September 30, 1989 and calculated by a two point moving arithmetic mean."

Page 9, Line 9 and Page 10, Line 5. "Dry period municipal and industrial supply" we assume to be a Bureau of Reclamation term of art. It should be defined or at least attributed to Reclamation.

Page 10, Line 18-24. By this language the Secretary of Interior alone shall determine when water is not required for the Pyramid Lake fish resources. There is no objective criteria stated or inferred to define when the fish resource requires water.

Page 19, Line 4. As drafted the Secretary of Interior shall pay damages of up to $16,000,000 out of appropriated funds if certain conditions are not met. We assume this money would come from BIA appropriations.

Page 21, Line 2-8. The Secretary of Interior shall pay damages of up to $7,000,000 per year if the water level of Pyramid Lake drops below certain elevations for specified periods of time. We assume such damage dollars would come from BIA appropriations.

Page 21, Line 21 through Page 22, Line 6. (1) With all repayment obligations removed from the Newlands Project as this section provides and the congressional charter granted to TCID to run the Project provided in Sec. 111(b)(1), we have concerns that the Secretary will not have authority to promulgate or enforce operating criteria. It has been operating criteria that the Secretary has enforced since 1967 that is in large measure responsible for the water surface rise at Pyramid Lake. (2) In this time of austere federal budgets the cost to the federal treasury of forgiving the Newlands Project repayment obligation should be listed.

Page 22, Line 7-11. The Truckee-Carson Irrigation District by this provision is granted authority to manage the Newlands Project facilities. The Secretary of Interior has had to take the operation of government facilities away from TCID in the past because of operational irregularities and yet this provision provides a congressional charter to the same organization. The Fallon Indian Reservation is part of the Newlands Project but not part of the Truckee-Carson Irrigation District. Language should be modified to acknowledge the Fallon Indian Reservation and provide a mechanism to guarantee water delivery to reservation lands.

Page 23, Line 11. The Endangered Species Act should be cited as 16 USC 1531; not 165 USC 1531.

Title II

We have grave concerns about the effect of the California-Nevada Interstate Compact. These concerns have been voiced ever since the mid 1960's. Our November 1984 memorandum to the Regional Solicitor is an example of specific concerns and is attached. These concerns fall in four areas:

(1) General. Water quality is not addressed and yet there are water quality problems in all four basins.

The Endangered Species Act is ignored.

The compact is not in harmony with the Orr Ditch and Alpine court decrees.

(2) Secretary of Interior. Federal sovereignty is compromised. In addition, the compact gives up a large measure of federal reservoir control and yet Title I of this bill burdens the Secretary with payment of damages if certain water surface elevations of Pyramid Lake are not maintained. Control of these reservoirs could have insured compliance.

(3) Pyramid Lake Reservation. Several compact provisions directly and negatively impact on the Pyramid Lake Reservation. We assume that the Pyramid Lake Tribe has considered these provisions in their negotiations of Title I.

(4) Walker River Reservation. The compact hurts Walker River Reservation and yet the Walker River Tribe has had no input nor does it derive any benefit from any Title of the bill as drafted.

We appreciate the opportunity to comment on a bill that directly impacts Tribes for which we have responsibilities.

/s/ Curtis Geiogamah

Attachment

cc: Office of Trust Responsibilities, Attn: John Hussman
FWS, Great Basin Complex Office, Reno
Superintendent, Western Nevada Agency
Chairman, Washoe Tribe
Chairman, Pyramid Lake Tribe
Chairman, Walker River Tribe
Chairman, Fallon Business Council
Michael Thorpe
Bob Pelcyger
Scott McElroy
Associate Solicitor Indian Affairs
Dave Galat
BLO

UNITED STATES GOVERNMENT

memorandum

DATE: November 7, 1984

REPLY TO ATTN OF: Phoenix Area Director

SUBJECT: California-Nevada Interstate Compact, our Meeting of June 14, 1984

TO: Regional Solicitor

Copy

At our Phoenix meeting on Thursday, June 14, 1984, you indicated that the files you inherited regarding the California-Nevada Interstate Compact were travel worn and incomplete. You requested that this office provide a listing of concerns relative to the proposed compact.

For approximately twenty years, representatives from the states of California and Nevada negotiated the language of an interstate water compact with token United States representation and no Indian input. After the draft compact passed the Nevada Assembly and Senate and was introduced in the California legislature, many federal agencies -- the Solicitor's Office and Bureau of Indian Affairs included -- devoted considerable time and expense in developing a federal position on the proposed compact. The official federal (including the Department of Interior) position taken as the result of that effort was one of rejection; that the compact was unacceptable in its present form. Neither the overall federal position nor that of the Department of Interior has ever been rescinded -- over a fifteen year period with four changes in administration and seven different men serving as Secretary of Interior.

The constancy of that position is extremely important since many major events have occurred in the intervening years that impact on Lake Tahoe and the Truckee, Carson and Walker River basins. For example:

- *Endangered Species Act enacted by Congress 12/28/73, P.L. 93-205.
- *Supreme Court decision in Nevada v. United States.
- *Final Decree in United States v. Alpine Land and Reservoir Company.
- *Ninth Circuit Court of Appeals decision in Carson-Truckee Water Conservancy District v. Secretary of Interior.
- *Unprecedented population growth in the Lake Tahoe and Reno-Sparks areas.

Through the years this office has consistently raised concerns about the compact in its present form and how it would adversely affect Indian people. Events that have transpired in the recent past such as those enumerated above have not allayed our concerns; in fact, we are now more concerned than ever.

Some of the major problems we have with the presently drafted compact are:

- o The compact allocates water amounts in both California and Nevada that are not consistent with the final decree in United States v. Alpine Land and Reservoir Company.
- o The compact is extremely detrimental to Pyramid Lake.
- o Area fishery problems are not addressed in the compact.

- There is no consideration given in the compact to water quality and yet water quality problems exist in each of the three river basins.
- The compact ignores the paramount United States interests in the region.
- The compact does not take into account the Congressional charge regarding treatment of endangered species.

We are aware of the recent negotiation position of the State of Nevada that compact approval in its present form is a necessary prerequisite to a negotiated settlement of the Pyramid Lake issues. In light of the concerns we have enumerated above and those we have attached, we see no way that United States officials can acquiesce to such a demand and still fulfill congressionally mandated federal functions.

Copy

JAMES H. STEVENS

Attachment

BIA COMMENTS
California-Nevada Compact
November 1984

1. We concur with the statement made by Secretary of Interior Stewart L. Udall in a January 14, 1969 letter to Charles J. Zwick, Director, Bureau of the Budget: "The compact goes beyond the usual function of allocating water between party states and purports to bind the federal government both as a sovereign and as trustee for Indians." And yet there was only token United States representation in the compact negotiation process (a neutral U.S. representative) and no Indian involvement. At the end of the compact negotiations a provision was added to the compact to bind the United States. Our position, because of the Indian people we represent, is that substantial changes in the compact must be made before it is accepted.

2. ART.II.E. The Carson sink area should be included within the definition of the Carson River basin. If the sink is not defined as part of the basin then the downstream limit of the Carson River basin should be precisely defined.

3. ART.II.F. The Walker River basin should include the whole Walker Lake and not just the portion on the Walker River Indian Reservation.

4. ART.II. Definition should be provided for "beneficial use".

5. ART.IV. The prohibition on domicle and residence for the federal representation appears to imply a belief on the part of the negotiators that a United States representative residing in Nevada or California would

be biased in favor of the state of his residence. We cannot accept this implication. Further, the rather detailed formula for membership on the Commission provides a large measure of local representation to interests in competition with the Pyramid Lake Indian Tribe for Truckee River water, but does not provide for tribal representation. Therefore, the terms of the United States representation should be revised and full Indian representation assured. Additionaly, by reason of the substantial federal interest in the region and the fact that the United States would be bound by key provisions of the compact, the federal representative should be a voting member of the Commission.

6. ART. IV.D.6. We do not believe that the Compact Commission should have unilateral power to dictate measuring devices over all lands within the appropriate water basins. Acceptable language would be the inclusion of a sentence following the phrase..."as the Commission may determine necessary or proper to carry out the purposes and provisions of the compact. Such determination may be made only after appropriate hearings or consultation with the water users and with respect to waters on Federal lands, shall take into consideration the program and plans of the Agency administering such lands.

7. ART.IV.D.11. As written, the Compact Commission has broader subpoena power than U.S. District Court judges. We find that objectionable.

8. ART.IV.E. As written, the Compact Commission could conceivably reallocate water irregardless of judicial decree. This is unacceptable.

9. ART.V. It confirms United States storage in Lake Tahoe between elevations 6223.0 and 6229.1 feet (Lake Tahoe datum). However, storage rights of the United States in Lake Tahoe run to an elevation of 6230 feet in the decree entered in the case of United States v. Truckee Carson General Electric Company, in the District Court of the United States, Northern District of California, Second Division, on June 4, 1915. The figure 6229.1 feet is not descriptive of the storage rights of the United States, but of the agreement of the United States in the Truckee River Agreement of June 13, 1935, that the Truckee-Carson Irrigation District will operate the outlet works in such a manner as to prevent, as far as possible, high water damage. Operating criteria, intended to prevent, insofar as possible, the lake elevation exceeding 6229.1 feet were agreed upon, but the latter figure is not the upper limit of the United States storage right. The storage rights of the United States are not affected by the 1935 contract. Therefore, the upper elevation of United States storage stated in the compact should be 6230 feet.

10. ART.V.E. The pumping from Lake Tahoe provision works against Pyramid Lake and judicious use of Stampede reservoir.

11. ART.V.F. This section gives the Compact Commission extremely broad powers that seem to supersede the "Orr Ditch" and "1915" decrees.

12. ART.VI. The Pyramid Lake Paiute Tribe is precluded by Nevada v. United States from asserting claims against appropriated water right holders. The tribe needs the unappropriated Truckee River water in California and Nevada. Presently the compact does not allow the tribe to do this.

13. ART.VI. At best the compact does not address the issue of reservoir operation.

14. ART.VI.1,3 & 4. Water is allocated for undefined purposes in California. Judge Ramirez has ruled from the bench in Pyramid Lake Paiute Tribe v. State of California that Tribe's claim to unappropriated water is unaffected by Nevada v. United States.

15. ART.VI.B.3. Six thousand acre feet of water are granted to California from Stampede reservoir. The allocation ignores the Ninth Circuit Court Decision in Carson - Truckee Water Conservancy District v. Secretary of Interior and the Endangered Species Act, 16 U.S.C. §1531.

16. ART.VI.B.4. Neither fishery flows nor lake stabilization are listed as beneficial uses of water.

17 ART.VI. Floriston rates are not mentioned in the compact and yet that is the logical place to address and correct their inconsistences and inefficiencies. Presently California is not bound by them and they are outdated. Floriston rate regime has a bearing on Pyramid Lake stabilization and spring spawning flows.

18. ART.VII. This article does not entirely agree with the final Alpine decree in regard to acreage, water rotation and irrigation season. Appropriate language perhaps could be inserted as follows: "The Compact

Commission shall recognize the pertinent provisions of the final Alpine decree as they pertain to allocations of water between California and Nevada."

19. ART.VIII. Water quality problems are not addressed and are of vital interests to the Walker River Tribe.

20. ART.VIII. The term "unused water" is used throughout the article. The term should be "unappropriated water".

21. ART.VIII.A.4(a). Weber Reservoir on the Walker River Indian Reservation was constructed fifty years ago. A right to store water in the structure has not been acceded to by the Nevada State Engineer. As now written this article would allow Hoye Canyon and Pickle Meadows reservoirs, proposed structures that have a Nevada water right priority in the 1930's to be constructed in the future and operated to the detriment of the Walker River Tribe.

22. ART.X. Interbasin transfers of water should further be limited by language of existing court decrees.

23. ART.XII. The Federal government owns and controls most of the storage and diversion facilities in the compact area. The Compact Commission should not control the operation of Federal reservoirs.

24. ART.XXI. This article purports to protect the right of the United States. Paragraph A through D, Article XXI, if taken alone, probably would give total protection to all present and future rights of the United States in

the four basins which are the subject matter of the compact. However, Article XXII, Ratification and Consent, an exception for which is contained in Article XXI, would require the United States, by Act of Congress, to agree that the 14 critical paragraphs of the compact dealing with the primary allocations of water are binding upon the United States. The binding provisions include those limiting the Indian rights in water for Pyramid Lake, those allocating water to upstream users in the Carson River, and those limiting the Indian rights on the Walker River Indian Reservation. Moreover, through cross-reference to other sections in the compact, the United States would be bound to still other provisions. Even if the United States agrees to be bound to the specific water allocation provisions of a renegotiated compact, the exceptions to the article protecting the rights and powers of the United States should not be so broad as to impair other valid rights and powers. For example, although the compact does not address itself to water quality per se, allocations and diversions under the compact could have serious effect upon water quality.

25. ART.XXI. Somewhere in the compact should be these additional paragraphs: ... except as provided in Article XXII nothing in this compact shall be construed as:

*Impairing or affecting the constitutional authority of the United States or any of its powers, rights, functions, or jurisdiction under existing or future legislation in and over the area of waters which are the subject of this compact.

*Affecting the rights or powers of the United States of America, its Agencies, instrumentalities, or wards to administer and control lands of the United States or lands administered by it, or giving to the Commissioner to any person, organization, or governmental entity and rights or powers to use, occupy, administer, alter or control lands owned or administered by the United States, except with the consent of the Agency or instrumentalilty administering or having control of said land.

*Relinguishing the functions, powers, or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, or shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations.

*A waiver by the United States of its immunity from suit.

26. Somewhere in the compact should be an article that says in substance: "The United States is entitled to develop additional water yields independently or in cooperation with others. Any such water yields that result from participation by the United States may be used for its own purpose of in furtherance of the purpose of this compact without regard to any State allocations made by this compact."

27. Somewhere in the compact thorough consideration should be given to the quality of water allocated by the compact. The Walker River Indian Reservation presently suffers from high concentration of total dissolved solids in late summer; Lake Tahoe communities now export sewage into the Upper Carson River drainage; and Reno-Sparks sewage treatment problem are accelerating Pyramid Lake algal blooms.

28. With the threatened Lahontan cutthroat trout and the endangered Cui-ui found in the affected watersheds the compact cannot ignore the Endangered Species Act.

PROPERTY OF WASHOE TRIBE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ALPINE LAND & RESERVOIR COMPANY,
a corporation, et al.,

Defendants.

Civil No. D-183 BRT

- DATE: October 28, 1980
- Was in court 55 or 56 years
- Finally decided by Judge Thompson

FINAL DECREE

FINDINGS OF FACT, CONCLUSIONS OF LAW, TABULATION AND ADMINISTRATIVE PROVISIONS

FINDINGS OF FACT

I. This Court has jurisdiction over the subject matter and the parties to this proceeding.

II. The Carson River and its tributaries are interstate streams and the waters of the Carson River and its tributaries are fully appropriated.

III. Under the Reclamation Act of June 17, 1902, the United States, acting by the Secretary of the Interior, on July 2, 1902, withdrew from public entry, excepting under the homestead laws in accordance with the provisions of the Act, the lands required for the government's first reclamation project, now known as the Newlands Project.

IV. The United States has diligently proceeded with the construction of the Newlands Project and has expended over Six Million Dollars ($6,000,000) in that construction. The works so constructed have been used for many years for the storage of Carson River water and the distribution thereof to Project lands. The principal structure of the Project is the Lahontan Reservoir which was completed at a cost of approximately One Million Four Hundred Thousand Dollars ($1,400,000). Lahontan Reservoir has a capacity of 295,149 acre-feet to the spillway crest. With 20 inch flashboards on the crest, the capacity is 317,280 acre-feet. The lands of the Newlands Project irrigated or susceptible of irrigation by the waters of the Carson River and its tributaries include 80,000 acres of cultivable lands, 50,000 acres of pasture lands, and 7,500 acres of land in the Truckee Division of the Project.

V. There existed prior to July 2, 1902 certain vested rights, owned by old-time settlers in Churchill County, in and to the use of waters of the Carson River and its tributaries. The United States, subsequent to July 2, 1902, acquired the right, title and interest of these owners in the waters, ditches, dams, and other irrigation facilities and structures and in return agreed to construct water storage and distribution facilities and to deliver certain waters to these owners.

VI. Prior to July 2, 1902, there existed under the ownership of Frank W. Inman and his wife the right to divert 40 c.f.s. of water of the Carson River with a priority of 1882 for the purpose of producing power. On February 12, 1912, Frank W. Inman and his wife executed an agreement conveying this power right to the United States.

VII. The United States possesses Trust Patents to five riparian rights on the West and East Forks of the Carson River in Alpine County, California, in favor of the following five beneficiary Indians of the Washoe Tribe, in the acreage as specified:

Name	Acreage
Dr. Bob	1.40
Hattie Miller (Cow Bitch)	19.73
Molly's Pete	16.40
Maggie James	4.40
GO-DAH-DIC-PETE	8.25
	50.18

VIII. The lands on which the waters of the Carson River and its tributaries are used lie in an arid region of the United States; to make these lands productive, irrigation thereof is necessary; these lands vary widely in texture, porosity, terrain, inclination, vegetation, crop use, sub-surface stratas and other factors which affect the amount of water necessary to irrigate different portions of said lands and further affect the amount of water which is returned to the main course by drainage and and other means; the various areas require, for proper irrigation and crop productivity varying quantities of water per acre. In the Newlands Project, the water duties are 3.5 acre-feet per acre delivered to the land for the bottom-land and 4.5 acre-feet per acre delivered to the land for the bench land. In the lands above the Newlands Project the water duties are 4.5 acre-feet per acre diverted to the canal for the bottom-lands, 6.0 acre-feet per acre diverted to the canal for the alluvial fan lands and 9.0 acre-feet per acre diverted to the canal for the bench lands. The water duties assigned for the various categories of the land are the total duties from whatever source of surface water.

The net consumptive use of surface water for irrigation on the Newlands Project is 2.99 acre-feet per acre. The net consumptive use of surface water for irrigation of the lands above the Lahontan Reservoir is 2.5 acre-feet per acre.

IX. The Carson River and its tributaries are divided into eight segments:

Segment 1: The East Fork of the Carson River from the California/Nevada state line up to the headwaters of the East Fork in the mountains.

Segment 2: The East Fork of the Carson River from the California/Nevada state line to the confluence of the East and West Forks of the Carson River.

Segment 3: The West Fork of the Carson River from the gauge at Woodfords, California upstream to the headwaters in the mountains.

Segment 4: The West Fork of the Carson River from the gauge at Woodfords to the California/Nevada State line.

Segment 5: The West Fork of the Carson River (and Brockliss Slough) between the California/Nevada state line and the confluence of the East and West Forks of the Carson River.

Segment 6: The main stream of the Carson River from the confluence of the East Fork, West Fork and Brockliss Slough to the gauge at Carson City.

Segment 7: The main stream of the Carson from the Carson City gauge to Lahontan reservoir. This segment is further subdivided for administration into autonomous subsegments:

(a) Mexican Ditch, Dayton and the reach between Rose Ditch and Cardelli Ditch, inclusive;

(b) Gee Ditch;

(c) Koch Ditch;

(d) Houghman and Howard Ditches;

(e) Buckland Ditch.

Segment 8: The area below the Lahontan Dam.

X. The historic practices, customs, agreements and decrees followed by the water users and the Federal Water Master on the Carson River and its tributaries:

1. General:

(a) The Watermaster shall begin to direct the distribution of water on such date that he determines there is not enough water in the Upper Carson River to serve the most junior priority.

(b) When such distribution begins, the water users are notified that the river is on regulation and diversions will be monitored.

(c) Subject to the exceptions described below, the water is distributed on the basis of priority and acreage.

(d) For purposes of distribution, the river is administered in segments in accordance with established practices, customs, agreements and decrees.

(e) When the river is on regulation each segment of the river is treated autonomously.

(f) The high alpine reservoirs on both forks of the river are filled out of the priority order. This is done because the snow does not melt sufficiently at those high elevations to fill the reservoirs until the summer when the river flow has already begun to diminish down in the valley.

(g) On all segments of the river, rotation is practiced so as to serve the junior priorities as long as possible.

(h) On both the East Fork and the West Fork, any user, regardless of his priority, who does not need the water does not get it. If the user has a need for it, he gets the water under his priority; if he does not have a need for it, the water goes to the next junior priority.

2. Segment 1:

Since this segment consists largely of riparian lands, there are no relevant customs and the Water Master exercises little supervision except to regulate the release of water from the Alpine Land and Reservoir reservoirs. Water in these reservoirs is represented by corporate stock and is rented, traded and sold to any landowner.

3. Segment 2:

(a) When the flow rate at the Gardnerville gauge reduces to 200 cubic feet per second, 1/3 of the river flow is directed into the Allerman Canal and 2/3 of the flow stays in the river. The point of measurement for the 1/3-2/3 split is at a weir located 100 feet downstream of the intersection of Highway 395 and the Allerman Canal. Water users on the Heybourne Tract served by the Allerman Canal, the upper New Virginia, Company and Cottonwood ditches hire a ditch rider to assist, under the direction of the Water Master, in the distribution of water.

(b) Reservoirs 1, 2 and 4 on the Dangberg lands are filled 3 times yearly. The reservoirs are filled once in February and March pursuant to their storage rights. The reservoirs are filled twice later in the year as a means of regulating the water flow in the Virginia and Allerman ditches and ensuring sufficient irrigation head during periods of peak irrigation demand.

(c) Most diversions in this and the other segments are based upon a two-week irrigation interval. The smaller canals such as the Peter Heitman, Berning, Christensen-Hussman, Madison or Topping No. 1 and Topping No. 2 divert for several days on a two-week interval. Other larger canals and sloughs divert on a continuous basis and individual ditches and laterals coming off these larger canals will be on the two-week rotation. Canals and sloughs that divert continuously are the Allerman Canal, Upper New Virginia, Rocky Slough, Henningsen System, Stodieck, St. Louis Straight, Homestream, Company, Cottonwood and Williams Slough.

The continuous diversion made by the St. Louis Straight and island portion of Homestream will be stopped and transferred to the Allerman Canal when the 1/3-2/3 split takes place.

(d) When the East Fork goes on regulation, the Cottonwood Slough is used to convey water downstream to the Williams Slough diversion rather than using the main channel of the East Fork.

4. Segment 3:

This segment on the West Fork consists largely of riparian lands and the Water Master exercises little supervision except to regulate the release of water from the mountain reservoirs for downstream use. Traditionally the water stored in the mountain reservoirs has not been considered appurtenant to any particular place of use.

5. Segment 4:

(a) The Anderson-Bassman Decree, Exhibit 16, provides that beginning the first Monday in June and continuing to the end of the irrigation season the available water supply is rotated on a weekly basis between Segment 4 and Segment 5. This custom applies to all water users on these two segments, not just the original parties to the Anderson-Bassman lawsuit or their successors in interest.

(b) The Price Decree, Exhibit 18, and the 1941 Agreement, Exhibit 19, control the rotation among the Segment 4 users during the week that Segment 4 has water under the Anderson-Bassman Decree.

(c) During the non-irrigation season, diversions are made by the Snowshoe Thompson No. 2 ditch via Indian Creek to store water in the Mud Lake Reservoir.

6. Segment 5:

(a) As mentioned above, this segment's diversions are made according to the weekly rotation schedule with Segment 4 after the first Monday in June.

(b) During Segment 5 week the water is allocated according to priorities. During Segment 4 week, any Segment 5 junior appropriators who did not get direct flows during Segment 5 week are allowed to use the return flows from Segment 4.

(c) The Dresslers usually bring their alpine stored waters down during Segment 5 week but Bruns and Gansberg usually bring their Lost Lake water down during Segment 4 week.

(d) The water stored in Mud Lake Reservoir is sometimes released to downstream users in exchange for direct diversion that would normally go to those downstream users.

(e) Brockliss Slough, starting in the vicinity of Dressler Lane, carries West Fork water drainage down to the confluence of Brockliss Slough and the East and West Forks. During times of short supply in Brockliss Slough, the use of water is rotated among the three oldest priorities; a second rotation is observed among the other priorities.

(f) Drainage water is occasionally diverted from the old West Fork into Brockliss Slough and then to lands west of Brockliss Slough.

(g) Due to the destruction of the Jones Company West ditch by flood, the lands formerly irrigated from that ditch are now served with return waters from Bull Slough. Bull Slough also receives return flows from irrigation using mountain creeks not considered tributaries of the Carson.

(h) Some rights which appear to be served with West Fork water are actually served with East Fork water which, after being used to irrigate East Fork lands, drains into the West Fork channel. These lands are generally those in between Squires Ditch and the Muller-Bartels dam on the West Fork.

(i) Water taken out of the East Fork through Rocky Slough and into Edna Ditch and other small ditches is used to irrigate lands between the East Fork and the West Fork.

7. Segment 6:

The diversions in this segment occur by pumping from the river. When the main stream is on regulation, the amount of water that gets to each pump is sufficient to satisfy that priority. As a result, and because of the high cost of regulation in comparison to benefits, the Water Master makes no attempt to regulate in this segment unless a controversy arises.

8. Segment 7:

Due to the intermittent nature of the river's surface flow, appearing upstream and disappearing downstream from various diversion structures, this segment is regulated in autonomous sub-segments.

9. Segment 8:

There are no relevant practices or customs in this segment and the Water Master only regulates when a controversy arises.

XI. The California riparian landowners are entitled to the riparian water rights permitted under California law.

XII. For proper administration of the respective rights of the parties in this action, it is necessary and proper that general administrative provisions be incorporated in this Decree and that a Water Master be appointed to carry out the provisions of the Decree.

XIII. The parties, persons, corporations, intervenors, grantees and substituted parties named in the following tabulation, and their successors-in-interest and assigns, constitute and are the only appropriators, riparian owners and users of the waters of the Carson River and its tributaries. The sole class of exceptions to the foregoing statement is the landowners on the Newlands Project who took land patents from the United States. Each such landowner is the owner of an appurtenant water right for the patented land as discussed in the opinion filed in this case. The Court has not been provided with a tabulation of these owners and their irrigated acreages. As to the future tabulation of these details, see Administrative Provision VI. All of the above-mentioned parties and their successors and assigns are the owners of water rights to the waters of the Carson River and its tributaries for the legally described acreages or places of use and with the listed priority dates, all contained in the following tabulation.

CONCLUSIONS OF LAW

I. The parties hereto are entitled to a Decree in this action adjudging and declaring that they are the owners and entitled to use the rights set forth in the following tabulation.

II. In accordance with the Findings of Fact and Conclusions of Law, IT HEREBY IS ORDERED, ADJUDGED AND DECREED as follows:

That the parties, intervenors, grantees, successors in interest and assigns are, and each of them hereby is, as against every party to this action, adjudged to be the owners of the water rights hereafter specified and set forth and entitled to divert, store and use from the Carson

River and its tributaries and from the streams and springs hereafter mentioned, and by and through their respective ditches, canals, flumes, dams and reservoirs for the irrigation of their respective lands as described in the tabulation, for generating power, for municipal purposes, for supplying the people living in cities and towns, for reclamation of arid lands, for watering livestock, for domestic uses and other beneficial purposes, water in the amounts discussed in the previous sections on water duty, subject and according to the respective priority dates and riparian ownership stated below and the historic customs, practices, agreements and decrees discussed above.

All points of diversion and places of use are described with reference to the Mount Diablo Base and Meridian. Where an entity owns multiple water rights, that entity is listed at the beginning of a series of water rights from a particular diversion ditch and is not repeated for each place of use. Similarly, if a series of places of use under the same owner all have the same priority date, that date is listed once on the first line of the series and is not repeated for each place of use. The only exception to this system is the tabulation of the water rights in Segment 4, where the Special Master listed the places of use for each owner and then gave total acreages for the relevant priority dates. The listing of owners is correct only insofar as the current information has been supplied to the Court. Any grantees, assignees or successors in interest should contact the Water Master with proof of chain of title.

Acreages and priorities are established in conformity with the evidence taken before the Special Master. Any changes of place or manner of use or point of diversion which have been since approved in the manner provided by the Temporary Restraining Order and Special Master's Report shall be recognized and recorded by the Water Master.

TABLE OF WATER RIGHTS
CARSON RIVER AND TRIBUTARIES
MAIN CARSON RIVER IN DOUGLAS COUNTY CARSON VALLEY, NEVADA

Claim Number	Names of Ditches and Locations of Diversions—Downstream	Owner	Riparian or Priority	Irrigated Acres	Place of Use by Subdivisions ¼ of ¼ of Section unless otherwise specified	Sec.	Twp. N.	R. E.
	Pumps (cont'd)	Harvey's James Canyon Ranch (cont'd)	1862 (cont'd)	0.17	NWSW, SE cor.	25	14	19
				0.08	SWNW, SW cor.	25	14	19
				0.37	NWNW, NW cor. W of chan.	36	14	19
680	Pump, on N bank of W branch of River near center of NE¼SW¼, Sec 25, T. 14 N., R. 19 E.	United States of America, Bureau of Indian Affairs [illegible]	1861	170.0	NESW✓ SENW✓, W½NE✓ NWSE, E½NE	25	14	19

TABLE OF WATER RIGHTS
CARSON RIVER AND TRIBUTARIES
EAST FORK - CARSON VALLEY, NEVADA

Claim Number	Names of Ditches and Locations of Diversions—Downstream	Owner	Riparian or Priority	Irrigated Acres	Place of Use by Subdivisions ¼ of ¼ of Section unless otherwise specified	Sec.	Twp. N.	R. E.
63	Peter Heitman - from left bank of East Fork near center SENW, Sec. 25, T. 12 N., R. 20 E.	United States of America in Trust for the Washoe Tribe of Indians upper ponds	1860	6.0	SW Cor. SW¼	24	12	20
				94.0	S½	23	12	20
				19.0	N½	23	12	20
				10.0	NW Cor. NW¼	25	12	20
				33.0	N part NE¼	26	12	20
64	Allerman Canal from right bank in SE¼SE¼ Sec. 23, T. 12 N., R. 20 E.	Arnold A. Settelmeyer, Grace A. Settelmeyer, United States of America (Fish Hatchery)	1861	20.0	W pt. N SE	23	12	20
				75.0	N½ between East Fork and Allerman	23	12	20
				10.0	SW Cor. SWSE	14	12	20
65			1875	25.0	N Pt. NE along road	23	12	20
				15.0	SWSE W and S of road	14	12	20
66		Lawrence E. Settelmeyer, Mary H. Settelmeyer	1888	15.1	S½SE	14	12	20
				9.6	N½ between East Fork and Allerman	23	12	20
67			1893	4.7	W pt. N½ SE	23	12	20
68		Robert L. Pruett, Margaret Pruett	1861	14.0	NW Cor. SE	14	12	20
				26.0	SW Cor. NE	14	12	20
69			1875	40.0	W½NE	14	12	20
70			1880	38.0	NE	14	12	20
				8.0	NE Cor. NW	14	12	20
				37.0	S½SE N. of Co. Rd	11	12	20
				29.0	SESW E. of Co. Rd	11	12	20

TABLE OF WATER RIGHTS
CARSON RIVER AND TRIBUTARIES
EAST FORK - CARSON VALLEY, NEVADA

Claim Number	Names of Ditches and Locations of Diversions—Downstream	Owner	Riparian or Priority	Irrigated Acres	Place of Use by Subdivisions ¼ of ¼ of Section unless otherwise specified	Sec.	Twp. N.	R. E.
125	Allerman Canal (cont'd)	William Johnson, E. M. Johnson, Martin W. Johnson	1895	45.0	S½SE	31	14	20
126			1895	20.0	NWSE	31	14	20
127			1895	33.0	S½SE	31	14	20
				18.8	NWSE	31	14	20
				78.5	S½SW	32	14	20
				39.0	NWSW	32	14	20
				14.0	NESW	32	14	20
				39.0	SWNW	32	14	20
				13.5	SENW	32	14	20
128		James Rolph III, June Irene Rolph	1895	40.0	NESE	31	14	20
				38.8	SWNE	31	14	20
				20.0	W½SENE	31	14	20
				20.0	E½SENE	31	14	20
129	Buckeye and Wheeler Slough Ditch from right bank in SE¼NW¼ Sec. 23, T. 12 N. R. 20 E.	W. Brooks Park	1875	6.7	NWSE, S pt.	14	12	20
				2.7	NWSE, SW corner	14	12	20
130		United States of America in Trust for the Washoe Tribe of Indians	1859	90.0	SW	14	12	20
131			1883	26.3	SW btw. river & ditch	14	12	20
132		Wayne C. Matley, Alouise A. Matley	1879	30.0	NWSW	11	12	20
				14.0	NESE, NE cor.	10	12	20
				23.0	SENE	10	12	20
				18.0	SWNW	11	12	20

TABLE OF WATER RIGHTS
CARSON RIVER AND TRIBUTARIES
EAST FORK - CARSON VALLEY, NEVADA

Claim Number	Names of Ditches and Locations of Diversions—Downstream	Owner	Riparian or Priority	Irrigated Acres	Place of Use by Subdivisions ¼ of ¼ of Section unless otherwise specified	Sec.	Twp. N.	R. E.
133	Buckeye (cont'd)	United States of America in Trust for the Washoe Tribe of Indians.	1857	62.0	NW, W of road	14	12	20
				33.0	SWSW, W of road	11	12	20
134			1860	18.0	S½SW, S&W of road	11	12	20
				16.0	NW, E of road	14	12	20
				38.0	NW, W of road	14	12	20
135			1882	35.0	NW	14	12	20
136	Berning-from left bank near center SWSW, Sec. 14, T. 12 N., R. 20 E.		1865	5.0	SW, NW Cor	14	12	20
				4.0	SE, NE Cor	15	12	20
137			1882	4.6	NESE, NE Cor	15	12	20
				11.5	NWSW	14	12	20
				3.9	SWSW	14	12	20
138			1865	3.0	NW, SW Cor	14	12	20
139a		J. R. Mason, Earl F. Calhoun, Jessie L. Calhoun, Richard E. Kinner, Betty E. Kinner, Gardnerville Ranchos, Raymond June Wykoff, L. J. Wykoff, Norman R. Knudson, Irene Knudson, Julie Ann Purdig, Thomas D. French, Beatrice M. French, Theodora Fisher, Donald Fisher.	1865	63.0	NE	15	12	20
139b		Raymond M. Smith, Margaret May Smith, Waite Nix, Virginia Nix, Elmer L. Wood, Sophie T. Wood, Gloria P. Granberg, Arne R. Granberg, Swift Builders, Lorraine Phillips, Cadis Phillips, Lou Davis, Carson Valley Country Club, Incorporated.	1865	25.0	SE, S part	10	12	20
140 Omitted								

Mr. **Taylor**. Mr. Hughes, did you have any additional comments?

Mr. **Hughes**. I think the important thing here are the recommendations that we are offering. It appears from the testimony today that there are many more significant outstanding issues that have arisen recently. Our thought is that if the bill does pass, that there should be clarification of congressional intent about the question of commission jurisdiction on Indian lands.

It is not a matter of being opposed to specific things like water measuring devices. And I think in principal there is agreement that water resources need to be managed efficiently.

What is important here is the fact that an instrument of State government not exercise jurisdiction unilaterally on Indian lands. From our reading of the bill, it seems to us to be vague in that sense. And I think what we would like to do is clarify the intent of Congress, reserving jurisdiction to the Federal Government.

In talking to the representatives of the State of Nevada, we laid out these concerns to Mr. Westergard in writing, so that the State would know what concerns we were presenting. We understand that to change the content of the compact itself would require going back to the State legislature. We are not asking that in this testimony. And I guess there have been several section 204's. I guess today I don't know what we would number ours, but clearly I think the compact in this bill is contained only in section 201.

The clarification that we are seeking does not change the operations of the commission. It just seeks to limit jurisdiction to the Federal Government as trustee for the tribe.

Mr. **Taylor**. Thank you for those comments, and thank you very much for your testimony. If we have any additional questions we will have to get back to you.

Mr. **Wallace**. Thank you for the time.

Mr. **Taylor**. I would like to call Miss Lanada James, chairwoman of the Tribal Survival Eco-Systems, with Elmira Copeland and Tina Tissychi.

Ms. **Tissychy**. Mr. Chairman, we will make our statements brief in the interest of time, and the fact that many of the issues have already been covered by many of the people that spoke here today.

STATEMENT OF TINA TISSYCHY, PYRAMID LAKE PAIUTE TRIBAL MEMBER

Ms. **Tissychy**. I am a member of the Pyramid Lake Paiute Tribe. And I feel that the issue of the Pyramid Lake people is what is really at risk here today. Many of you really don't understand what life is like for us on our reservation.

At Pyramid Lake we only have our water, what is in the Truckee River and what is in the Pyramid Lake. And for us, that water is the only determining factor for the quality of our lives.

In the Senate bill, as it is proposed, S. 1558 would abolish this life as we know it. It would change it for the Pyramid Lake Tribe both collectively and individually. Any support of this bill that the Pyramid Lake Tribal Council has offered here today, or in prior time, is without the comprehensive understanding and concurrence of the tribal members. We have yet to hold a referendum on this bill, and I hope that you will agree that any legislation that affects an individual, that that individual has a constitutional right to be informed of its effects, and either accepts or rejects.

The manner in which this bill has been rushed through has not allowed the tribal members time to make a knowing decision. Before you approve this bill, I ask that you uphold these rights and allow us time to understand the impacts of this legislation.

All other parties that should be concerned with safeguarding our rights, the tribal people's rights, have been shirking their responsibility in this manner.

We also disagree with the water allocations that are set aside for the tribe, and do not feel that the 30,000 acre-feet of water is going to be sufficient no matter how it is modified. No matter how much damages we are ever going to be able to claim, that would meet the 380,000-plus acre-feet of water that the lake needs to have just to maintain its present level. And I think earlier you had asked Mr. James the level of the lake, and at present I believe it is 3,812 feet. So, at this time it is unusually high.

And you heard today that the cui-ui have been spawning independently on their own. So the urgency that this bill be passed immediately, because they are dying every minute, I don't believe is sufficient reason to rush this bill through over the rights of the people that this bill is going to effect.

Mr. TAYLOR. Would you agree with the statement that the lake has, since 1969 or 1970, has actually come back up about 20 feet?

Ms. TISSYCHY. Yes; it has. And another case that I think should not be allowed to be matter of negotiations is the point that the waters section 113 of title I give exemptions, and that they do not have to meet the EPA standards. And I live above a hill, I live in the first town in our reservation where the water first comes into our reservation, and that water is so polluted that our children cannot even swim in that water. We have had one documented case of hepatitis related to the poor water quality at present. So, I don't believe that should be a negotiated point.

These are just some of the concerns that tribal members will have on the Senate bill. And mostly I am here today to ask you not to sanction this legislation, but to allow us time to investigate this legislation, and not to allow a people to in effect be destroyed by this legislation to serve the interests of the real estate and water brokers of California and Nevada.

I think that this water theft from our tribe can be stopped, but it is only going to be by your consciencious efforts and a commitment to uphold the rights of the people. And I thank you for allowing me to speak.

Mr. TAYLOR. Thank you very much.

Ms. Copeland.

STATEMENT OF ELMIRA NORTHRUP COPELAND, PYRAMID LAKE PAIUTE TRIBAL MEMBER

Ms. COPELAND. My name is Elmira Northrup Copeland. I am a member of the Pyramid Lake Paiute Tribe. It was in the early 1960's that I was on the Pyramid Lake Paiute Tribal Water Committee. At that time, James Vidovitch was tribal chairman. Members of the water committee were Lawrence Williams, Warren

Tobey, Avery Winnemucca, Leonard Wadsworth, Ted James, the tribal chairman, and myself. We fought the water compact for years. And now, the tribal council, under the advice of the attorney, Michael Thorp, are giving it all away.

The people of Pyramid Lake were never informed about this proposed bill, yet they are the main people affected by this legislation. They want an opportunity to decide for themselves and have signed a petition to demand reversal of official endorsement by the tribe until they can have a referendum, a binding election, that the tribal council on any prior enacted resolution. This right is a guaranteed protection under our tribal constitution and bylaw.

I am submitting a copy of our petition with the signatures of at least one-third of our qualified voters with this testimony. The voice of the people are against this bill. This is the only official position of the Pyramid Lake Tribe until the election is carried out. Any endorsement of the tribal council today is not the wishes of the people.

The elders say not to sell our water, and I myself do not feel our attorneys should dictate to our people and tell the council how to sell out. My grandfather was a Pyramid Lake Paiute, and he told me never to sell our water, no matter how poor we may become, and someday the white man will want your water. And that day is here again. He was 81 years old——

Ms. TISSYCHY. And like all of the members of the old water committee of the tribe, they have always been the elders, 65 years and up, of the tribe. And it goes on—her statement goes on that we have always opposed the compact except for the new chairman and certain council members, who are being misled taking the word of the tribal attorney.

When we took the petition to our chairman, he hid from us and would not accept the petition. He also instructed his secretary not to take any phone calls from us. These are some of the problems that we must take home and resolve amongst ourselves.

Our former tribal chairman, Roy Garcia, who is now on the council, is strongly in opposition of this bill, as are four other members on the council. At the most recent special meeting there was a split decision on the council of a vote of four opposed and four in favor. The deciding factor was our chairman, who decided to go with what his position was today.

We would like to submit into testimony the statement of a former tribal chairman, James Vidovitch, who did successfully speak against the compact when it was first brought to Congress back in 1969.

Mr. TAYLOR. Do we have a copy of that statement?

Ms. TISSYCHY. Yes; you do.

[The statement of James Vidovitch is included as part of Ms. Copeland's prepared statement.]

[Ms. Copeland's prepared statement and the petition signed by qualified voters of the Pyramid Lake Paiute Reservation follow:]

Testimony of Elmira Northrup Copeland before the Senate Select Committee on Interior and Indian Affairs, October 2, 1985

It was in the early sixties that I was on the Pyramid Lake Paiute Tribal water committee. At that time, James Vidovitch was tribal chairman. Members of the water committee were Lawrence Williams, Warren Tobey, Avery Winnemucca, Leonard Wadsworth, Ted James, the tribal chairman and myself. We fought the water compact for years. Now, the tribal council under the advise of the attorney, Micheal Thorpe are giving it all away.

The people of Pyramid Lake were never informed about this proposed bill, yet they are the main people affected by this legislation. They want an opportunity to decide for themselves and have signed a petition to demand reversal of official endorsement by the tribe until they can have a referendum election binding the tribal council on any prior enacted resolution. This right is a gaurenteed protection under our tribal constitution and bylaws.

I am submitting a copy of our petition with the signatures of at least one third of our qualified voters with this testimony. The voice of the people are against this bill. This is the only official position of the Pyramid Lake Tribe until the election is carried out. Any endorsement of the tribal council today is not the wishes of the people. The elders say not to sell our water and I myself do not feel our attorneys should dictate to our people and tell the council how to sell out. My grandfather was a Pyramid Lake Paiute and he told me never to sell our water/no matter how poor we may become and some day the white man will want your water, and the day is here again. He was 81 years old when he died. Like all the members of the old water committee for the Tribe, they were all 65 years old and up, except me and James Vidovich. We have always opposed the compact except for the new chairman and certain council members who are being mislead, taking the word of the tribal attorney. When we took the petition to our chairman, he hid from us in the bathroom or some where. He also instructed his secretary not to take any phone calls from us. Our former tribal chairman Roy Garcia opposed this bill as well as certain other tribal council members. I hereby submit the following statement of our late tribal chairman, James Vidovitch...

"...you built more dams that take more water. You seek to irrigate more land productive. And yet, then you pay other people to take land out of production. And you let tens of millions of your people go hungry. You suffer from lack of water, yet you pollute the streams and rivers. You spend millions for tourism so that you may flee the cities you have built to seek the peace of nature, and then you destroy nature. You make the deserts of the west grow crops by spending millions upon millions. And so as you sow the ground with money, you wonder that the people of the Southeastern states live in poverty for they cannot compete. They go to your cities, impoverished and they protest, they burn, they riot. Now they pray for ecology but you continue to defile nature. And you are not contentwith the damage you have already done. So long as there is a lake, a stream, a forest, a grassland, you must manage it. You must dam it, channel it, reforest it. You must restock the streams, create wild life preserves, spending all your energy first destroying, then trying to undo that destruction by further destruction. But you cannot leave one thing untouched, can you not leave one people alone? Can you not honor one promise? Can you not respect even one lake, and one stream, one nearly extinct breed of fish and one natural pelican rookery, and one natural lake ___ the greatest of the great lakes left from the days of the great glaciers?...You would strip even that in an attempt to perpetuate your past folly, destroying more in the belief that somehow by such destruction you can bring life.

We have kept our promise with nature and with our fellow men. You have broken both time and again. And now you are about to do so one again. We have rights - rights to life that you did not bestow because it was not yours to give. Our lawyers tell us it is the right or aboriginal title. It was ours before it was yours to bestow. But you would take it from us".

PETITION

September 15, 1985

We the undersigned qualified voters of the Pyramid Lake Pauite Reservation DO HEREPY DEMAND that the Tribal Business Council formally oppose by resolution, any prior approval of the legislation being introduced called the "PYRAMID LAKE PAUITE AND TRUCKEE RIVER ACT OF 1985",

Additionally, we request that the Tribal Council put this issue to a popular referendum vote after public meetings are held in all three reservation communities to hear the "pros and cons" of this controversy. The authority for this petition is found in the PYRAMID LAKE PAUITE TRIBAL CONSTITUTION AND BYLAWS, ARTICLE VIII--REFERENDUM.

> "Upon a petition of at least one third of the qualified voters of the Pyramid Lake Pauite Tribe, a referendum may be deemed on any enacted or proposed ordinance or resolution of the Tribal Council, and the vote of the majority of the qualified voters in such referendum shall be conclusive and binding on the Tribal Council."

	NAME	ADDRESS	DATE
1.	Wilma A. Crutcher		9-14-85
2.	Phelan [illegible]		9-14-85
3.	[illegible]		9-14-85
4.	[illegible]		9-14-85
5.	Maurice [illegible]		9-14-85
6.	Elmira Copeland		9-14-85
7.	Gilmore [illegible]		9-14-85

	NAME	ADDRESS	DATE
8.	[illegible]	[illegible]	[illegible]
9.	[illegible] Pete	[illegible]	[illegible]
10.	Jeanette Plympton	Wadsworth Nv.	9-14-85
11.	[illegible]	Wadsworth, Nv.	9-14-85
12.	[illegible]	PO Box 354/785 Wadsworth Nv	9-14-85
13.	[illegible]	213 [illegible]	9-14-85
14	[illegible] Williams	P.O. Box 35	9-14th 85
15.	[illegible]	P.O. Box 332	9-15-85
16.	Alvin R James	Box 27, Wads. Nv	9-15-85
17	Francine Kophamp	P.O. Box 264 Nixon	9-17-85
18.	Norman Henry	P.O. Box 66 Nixon	9-17-85
19	Diane Dunn	P.O. Box 25 Nixon	9-13-85
20	Michael Dunn	P.O. Box 263 Nixon	9-17-85
21.	Christine Dunn	P.O. Box 263 Nixon	9-17-85
22.	Harry Jim	P.O. Box 86 Nixon	9-17-85
23	Lula Jim	" "	9-17-85
24.	Chester Lowery	Box 52 Nixon	9-17-85
25.	Emeline Lowery	Box 52 Nixon	9-17-85
26.	Winnie Smith	Box "	" " "
27.	Eunice Sam.	" "	" "
28.	Benson Scott	P.O. Box 51 Nixon	9-17-85
29.	Ella Esmaria	Gen. D.	9-17-85
30.	Milford Tobey	P.O. Box 2	9-17-85
31	Warren Tobey	P.O. Box #2	9-17-85
32.	[illegible]		9-17-85
33.	Orville Barlese	P.O. Box 33	9-17-85

34 [illegible] Barlese [illegible] Nixon Nv. [illegible]
35. Dean Barlese PO Bx33 Nixon Nv. Sept. 16, 1985
36. Ann Barlese Box33 Nixon, NV. 89424 9.16.85
37. [illegible] Barlese Bx33 Nixon Nv. 89424 9-16-85
38 [illegible] Bx 221 WADSWORTH NV 89442 9-16-85
39. Edw Mitchell Box 206 Wadsworth Nv. 89442
40. Curtis Davis P.O. Box 915 9/17/85
41. Levi Dunn GEN DEL NIXON 9/17/85
42. Manuel Smith GEN DEL NIXON 9/17/85
43 Lloyd Lowery P.O. Box 53 Nixon Nv 9/17/85
44. Hattie Lowery P.O. Box 53 Nixon Nev 9/17/85
46. Judith Lowery Box #53 Nixon, Nevada 9/17/85
46. [illegible] Lowery Box #91 Nixon, Nevada 9-17-85
47. Avis Dunn Box #55 Nixon Nev.
48. George Dunn Box 8 Nixon Nev. 9-17-85
49. Laverne Dunn Box 8 Nixon Nev. 9-17-85
50. Bernita Teton Box 84 Nixon Nev. 9/17/85
51. Donna Teton Box 84 Nixon, Nev. 9-17-85
52. Margaret Harris Box 224 Nixon Nv 9-17-85
53. Priscilla Smith Bx24 Nixon, Nv 9/17/85
54. Daniel T. Smith Box 24 Nixon Nv. 9/17/85
55. Fred R. Smith Box 3 Nixon Nev 9-17-85
56. [illegible] Andrews Box 215 [illegible], Nev 9-17-85
57. Margaret S. Harris Box 173 Wadsworth, Nev
58. [illegible] Henry Box #62 Nixon Nev. 9-17-85

59. Sonja Gonzales Wadsworth, N.V. 9/17/85
60. Estella A. Pancho P.O.Box 382 Wadsworth, Nv. 9-17-85
61. Ralph R. Copeland Jr P.O. Box 1197 Fernley NV 9/17/85
62. Norma Jean Blossom Jackson 2562 Desert Flower, Sutcliffe, Nv. 89510
63. Michael Luke Chosein 4522 Tufa Rock Rd Sutcliffe, Nv 89510 9-17-
64. Sharon Christensen 4523 Tufa Rock Rd. Sutcliffe, NV 89510 9/17/85
65. Lester James 4530 Tufa Rock Rd. Sutcliffe NV. 89510 9/17/
66. John French 4530 TufA Rock RD. Sutcliffe NV. 89510 9/1
67. Donna Benally 4544 Tufa Rock Rd. Sutcliffe Nev 89510
68. Lindsay Blossom 2548 Desert Flower Sutcliffe Nev 89510
69. Anthony Sampson 4516 Tufa Rock Rd Sutcliff Nev 89510
70. Teresa Pete [illegible] 2518 Desert Flower Lane Sutcliffe, Nevada 89510
71. Leila Lucas, 2534 Desert Flwr Ln. Sutcliffe NV 89510
72. Roy Hicks 2556 Desert Flowr Ln. Sutcliffe NV 89510
73. Carmen Libby Sr. 77 Sutcliff Star Rt Reno 9/17/85
74. Enis E. Otero Wadsworth, Nev 9/18/85
75. Ted James Jr. P.O. Box 89 Wadsworth Nv. 9/18/85
76. Eleanor Sanders Wadsworth, Nv 9/18/85
77. Cheryl J. Johnson Box 433 Wadsworth, Nv 9-18-85
78. J. Hope Snider Box 103 Wadsworth 9-18-85
79. Vickie J Lowery Box 342 Wadsworth 9/18/85
80. Marion Paddy P.O. Box 295 Wadsworth Nev. 9/18/85
81. Mary Dodd Box 231 Wadsworth Nev 9/18/85
82. Ned Davis Bx 224 9/18/85

83. Larry L. Melendez P.O Box 265 Wadsworth Nev. 89442 9-18-8
84. Susan Albright Wadsworth Nev.
85. Mildred Albright " "
86. Carolyn Fillmore Box 365 Wadsworth Nv. 9-18-85
87. Helen Sturgeon
88. Ron Smith 2515 Desert Flower Ln Sutcliffe, Nv
89. [illegible] Williams P.O. Box 29 Wadsworth NV 9-18
90. Adrian Williams " " " " " "
91. Charlene Williams P.O. Box 362 Wadsworth, Nev 8944
92. Benjamin Lowery Jr. P.O BOX 435 WADSWORTH NEVADA 89442
93. Elroy Williams Sr. Box 82 Wadsworth. NV 89442
94. [illegible] p.o. Box 326 Warksworth Nev. 89442
95. Mary Wadsworth Box 323 Wadsworth 9/18/85
96. Larry [illegible] Jr. Box 52 Wadsworth 9-18-85
97. Elizabeth Johnson P.O Box 223 Wadsworth 9/18/8
98. Marcella Melendez P.O. Box 381 Wadsworth 9/18/85
99. Lolita Hickman P.O Box 384 Wadsworth 9/18/8
100. Gordon Dodd P.O. Box 23. Wadsworth Nv 89442
101. Gloria Smith P.O. Box 81 Wadsworth, NV. 89442 9/18/85
102. Leo Smith " " " " 9/18/85
103. Ray Lowery P.O BX 253 [redacted] Wadsworth Nv 89449 9/18/8
104. Glenda Davis P.O. Box 233 Nixon, Nv 89424 9/18
105. Laurence S. James P.O. Box 194, Wadsworth Nv. 9/18 8944
106. Donald James P.O Box 52 WADSWORTH NEV 9-18-85 89442
107. Delia James P.O. Box 307 Wadsworth, Nev 89442
108. [illegible] James Wadsworth NV

109 Reynelda James P.O. Box 126 Wadsworth, NV 8944.
110 Box 104 Nixon, NV 89424
111 Thomas Henry P.O. Box 116 Nixon NV
112 Lea O'Neil P.O. Box 21 Wadsworth, NV 89442
113 P.O. Box 244 Nixon Nv 89424
114 Cheryl Kochamp Box 244 - Nixon, NV. 89424
115 Lena Wright Nixon Nev. P.O 56
116 Winona Phoenix P.O. Box 101 Nixon Nev. 89424
117 Myrna Dunn P.O Box 55 Nixon NV
118 Arthur Dunn P.O. Box 55 Nixon Nev.
119 Loretta Hickley P.O. Box 237 Nixon, Nv.
120 Lyle Pancho P.O. Box 245 NIXON, NV
121 Marie Pancho P.O. Box 245 Nixon, NV
122 Cheryl Christensen P.O. Box 45 Nixon NV
123 Arlene Henry P.O. Box 216 Nixon NV 89424
124 Box 252 Nixon Nev.
125 Verna Plympton Box #252 Nixon, Nv. 89424
126 Box 244 Wadsworth, NV. 89442
127 Jolene Henry P.O. Box 388 Wadsworth, NV 89442
128 P.O Box 413 Wadsworth. NV. 89442
129 Lotie Melson P.O Box 323 Wadsworth, Nv. 89442
130. Harlan Phoenix P.O BOX 56 NIXON, NV 8942.
131. Gregory D. Henry P.O. BOX 57 NIXON, NV 8942.
132. NIXON, NV 89442
133. P.O. Box 211 Nixon
134. Owen mi P.O. Box 13 NIXON

135 [illegible] P.O. Box [illegible] Wadsworth, Nev. 89442 [illegible]
136 [illegible] P.O. Box [illegible] Wadsworth, [illegible]
137 [illegible] Reno NV.
138 [illegible] P.O. Box [illegible] Wadsworth, Nv 89442
139 [illegible] Wadsworth Nv 89442
140 [illegible]
141 [illegible] Shaw P.O. BOX 30 WADSWORTH Nev
142. [illegible] P.O. Box 592 Fernley, Nv 526 Coyote Ct [illegible]
143. [illegible] P.O. Box 41 Wadsworth Nev 89442
144. Jenna Gates Star Rt. Sutcliffe Nv 89510
145 [illegible] Star Rt. Sutcliffe Nv 89510
146. [illegible] 574 Tufa Rock [illegible] Sutcliffe 89510
147 Dorothy Christensen Sutcliff Star Rt. Reno 89510
148 Roy G Dunn Nixon, NV
149. Thomas Pete Jr 2500 Desert Flower Ln Sutcliff
150 [illegible] Winnemucca 4577 Tufa Rock Road, Sutcliffe
151 [illegible] Sutcliffe, Nev
152 Armellia Barlese P.O Box 7, Nixon Nevada
153 Velda Smith Nixon Nevada Box 23,
154 Daniel Tobey Nixon Nev
155 Freda Dunn P.O. Box 214 Nixon, Nev.
156 Alvarette Tobey Nixon Nevada 89424
157 [illegible] P.O. Box 11 Nixon Nev 89424
158 Judy Thomas P.O. Box 224 Nixon, Nevada 89424

Mr. TAYLOR. Ms. James.

STATEMENT OF LANADA JAMES, CHAIRWOMAN, TRIBAL SURVIVAL ECO-SYSTEMS, PYRAMID LAKE PAIUTE TRIBE

Ms. JAMES. My name is Lanada James. I make my home on the Pyramid Lake Indian Reservation where I live with my family who are Pyramid Lake Paiutes. I am only one Indian, but I speak for my children and grandchildren in generations to come who will be the future of Pyramid Lake.

I guess it does not make any difference whether there are 1 or 500 Indians pleading for our lives here today. You know, and I know, that this bill will legitimize all the illegal and unconscionable acts of greed to steal water from Pyramid Lake and every Indian tribe in the States of Nevada and California.

All the legal arguments against S. 1558 have been made for the last four administrations by our legal trust responsibility among other agencies and tribes, and testimony entered here today. The Bureau of Indian Affairs and the Department of the Interior have already entered into the record the reasons why this bill is destructive and harmful to the survival of Indian tribes. yet, all of this is suddenly ignored. Why? Whose political ambitions are more important than the thousands of Indian lives and lands dependent on this water for survival?

When the Assistant Secretary of Reclamation, Robert Broadbent, submits testimony on behalf of the Department of the Interior, as the legal trustee protecting the interests of Indian people, there is a definite conflict of interest. Broadbent wants to be the next Governor or Senator for the State of Nevada, and this is his first delivery of political favors to the State of Nevada to ensure his election.

President Reagan and Senator Laxalt have prescribed the political scenario and Broadbent is their man. There is no sacrificial lamb. Just the Indians.

What happened to the constitutional protections guaranteed to all people? Where is liberty and justice for all? Is this why the Liberty Bell cracked? History reveals that the first Supreme Court Justice, John Marshall, ruled in favor of the Cherokee Nation, upholding the constitutional protections for Indians of the United States.

President Andrew Jackson defied this supreme law of the land and forceably removed the Cherokee Nation from their homelands west of the Mississippi River. This was known as the Trail of Tears. The Liberty Bell rang for the last time at Chief Justice Marshall's funeral, then it cracked.

From that time until now, the Indian people have been victimized by the prejudicial and discriminatory interests of irresponsible governmental control. The Indian people have suffered great hardships and losses imposed by irrational decisions. Already this whole country and natural resources have been usurped by private and governmental entities. All that is left for us, the original caretakers and landowners of this country, are our small reservations set aside for our use and occupancy.

And now, you want to take this by stealing the precious flows of water that provides life sustenance for our survival. Thank you for your responsible consideration. You, the Congress, have the plenary authority over all Indians. Thank you.

Mr. TAYLOR. Thank you very much for your testimony.

I know that under your own constitution you do now have this bill subject to a referendum. I would like to make a couple of other comments though. The mere fact that a proposal was made to get out of court and into a negotiation posture does not mean that you are selling out or that you are being sold out by an attorney. I have had many cases that I took to a trial because the client insisted on it, and rather than come out with a compromised victory, we came out with a loss. I think compromise could, and should be in the interests of the tribe, of the fish resource, of the lake, as well as the interest of the other parties. If that is not what this compromise does, then I think you are very right in opposing it. If it is what the compromise does, I think you should give it very, very serious consideration. And I hope that out of these meetings you have with the tribe you will be able to explore the elements of the proposed compromise very fully and completely.

Ms. TISSYCHY. That is what we are asking for, sir, is the time to do just that.

Ms. JAMES. Yes; thank you. We appreciate what you had to say, but we also believe we don't need a bill to agree to agree. It is something that could be negotiated among all the parties, and foremost, letting the people know what all is at stake before anything—well, before it had to come this far.

Mr. TAYLOR. Thank you all very much. I would like to call Mr. Edward Osann of the National Wildlife Federation, and Mr. Whitney Tilt of the National Audubon Society.

Mr. OSANN. Thank you, Mr. Chairman.

STATEMENT OF EDWARD R. OSANN, DIRECTOR, WATER RESOURCES PROGRAM, NATIONAL WILDLIFE FEDERATION

Mr. OSANN. My name is Edward Osann, I'm the director of the water resources program for the National Wildlife Federation. We won't attempt to make a long day longer by reading our testimony in full.

Mr. TAYLOR. Well, we'll make your full testimony a part of the record.

Mr. OSANN. I have copies of a letter being forwarded to the committee by the Nevada Wildlife Federation, our State affiliate in Nevada. And with the permission of the committee, I'd like it to appear in the record at this point.

Mr. TAYLOR. It will be made a part of the record.

Mr. OSANN. We appreciate the opportunity to present these views. The National Wildlife Federation is opposed to the enactment of this bill in its present form. We are mindful of the desirability of negotiated settlements to complex water rights disputes, and we are sympathetic to the desire of the parties to the negotiations for a reasonable degree of finality to the controversy. However, the bill leaves basic issues unresolved, such as the Truckee diversion.

By its own terms, the bill falls short of effectuating a permanent settlement. For this and a variety of additional reasons, we are opposed to the enactment of the bill.

Just hitting the high spots in the areas of concern to the National Wildlife Federation, starting with the waiver of NEPA, the National Environmental Policy Act. The bill would waive the application of the National Environment Policy Act in Section 113(a). We believe that such an exemption is unwise for Reclamation projects generally, and for this legislation in particular.

Since there are significant hydrologic and biologic issues yet to be resolved, we believe that it is critical that the integrity and the applicability of the NEPA process be continued. This is more than simply an academic question or a concern for precedence. We think that NEPA has a direct bearing and a direct value to decision makers with respect to the Truckee-Carson system. These issues are precisely the types of problems that can best be resolved through the NEPA process, and we oppose the waiver provisions in this legislation.

Section 113(b) of the bill would declare by legislative fiat that certain actions contemplated by the bill will comply with the Endangered Species Act, even if, in fact, they do not. We strongly disagree with such a declaration.

We'd note that minimum flows and timing of flows to Pyramid Lake are not established for fish recovery purposes. We'd note that the decision of the Ninth Circuit Court of Appeals sustaining the Secretary's action giving priority to endangered species in the management of Stampede Reservoir would be specifically countermanded, and so on.

The declaration of sufficiency now contained in the bill, we believe, is unacceptable.

The bill fails to insure that important wetland values will be maintained upon implementation of the legislation. Wetland impacts, we believe, should be recognized and mitigated concurrent with the implementation of other authorized activities. This is certainly the trend for water resource development legislation generally in the last several years, and we think it would be appropriate to incorporate it in this legislation as well.

The bill fails to emphasize the recovery of Pyramid Lake fish resources. This may seem a bit paradoxical since there is a considerable portion of title I devoted to fish propogation. But we would point out that simple improvement of a species' biological status can fall short of species recovery because hatchery production of fish, as emphasized by this bill, can improve biological status without resulting in recovery if the species cannot reproduce naturally.

Fifth, the bill fails to consider provisions of the recovery plan adopted by the Secretary for the cui-ui and the draft recovery plan for the Lahonton cutthroat trout. There are already recovery plans in place, we would point out.

The bill also fails to ensure adequate flows of water for recovery of Pyramid Lake fish resources. Maintenance of an average elevation in Pyramid Lake alone, as provided for in the bill, will benefit fisheries only if delivery of water into the lake is timed to coincide with the fishes' needs during their annual spawning cycle.

Additionally, authority to conduct weather modification programs, which is contained in the bill, raises regional and national issues. The broad new authority contained in section 105 for the Bureau of Reclamation to implement a weather modification program, we believe should be eliminated. This raises questions of liability, water rights, and environmental impacts that need to be answered in a regional, if not a national, context before this activity should commence in this particular basin.

Unfortunately section 105 is one of those provisions of the bill that is exempt from NEPA. And we think this demonstrates the inadvisability of this provision.

The amount of funding authorized for the Pyramid Lake settlement Fund may prove to be inadequate. Some of the estimates of the cost to be incurred under the bill run to nearly twice the $29 million authorized for the Pyramid Lake settlement fund. Notably absent from this pool of Federal and State funds is any contribution from the beneficiaries of any of the three Reclamation projects in the Truckee-Carson basin. Yet the remedial program contained in the bill to restore threatened and endangered species has been necessitated by the diversion of water for other uses, and the resulting degradation of essential habitat.

We believe it is reasonable to expect that water users should shoulder some portion of the cost of such a remedial program. Unfortunately the bill fails to establish such a funding requirement, and even goes so far as to waive an existing outstanding repayment obligation for TCID.

Finally, the interstate compact contained in title II, for many of the reasons that have been identified here today, we believe is obsolete.

We would conclude with the observation that the entire hydrologic system of the Truckee-Carson basin has been placed under severe stress over the years. Historic water policies at the State and Federal levels have produced many unwelcome environmental side effects. Large quantities of water are now dedicated to the irrigation of relatively low value forage crops, and more water is being sought by a rapidly growing urban area where residential customers are not even metered.

Under these circumstances, we believe this committee should reject the bill in front of you. The parties to the Pyramid Lake settlement should be charged by the committee to go back to the negotiating table and explore additional options with the Secretary of the Interior for resolving outstanding claims, without jeopardizing further the natural resources of the Truckee-Carson basin. Thank you.

Mr. TAYLOR. Thank you very much.

[Mr. Osann's prepared statement, on behalf of the National Wildlife Federation, and the referred to letter of the Nevada Wildlife Federation follow:]

NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

Statement of
Edward R. Osann
Director, Water Resources Program
National Wildlife Federation

on
S. 1558
Pyramid Lake Settlement

before the
Select Committee on Indian Affairs
United States Senate
October 2, 1985

My name is Edward R. Osann, and I am the Director of the Water Resources Program of the National Wildlife Federation (NWF). The Federation is America's largest conservation organization, with over 4.5 million members and supporters nationwide, and 51 affiliated state and territorial organizations.

I appreciate the opportunity to present these views. The National Wildlife Federation is opposed to the enactment of this bill in its present form. We are mindful of the desirability of negotiated settlements to complex water rights disputes, and we are sympathetic to the desire of the parties to the negotiations for a reasonable degree of finality. However, the bill leaves basic issues unresolved, such as the Truckee diversion. By its own terms, the bill falls short of effectuating a permanent settlement. For the additional reasons indicated below, we view the bill as seriously flawed.

OBJECTIONABLE FEATURES

1. The bill would waive the application of the National Environmental Policy Act.

Section 113(a) of the bill would exempt several key provisions of Title I from the requirements of the National Environmental Policy Act (NEPA). We believe that such an exemption is unwise for Reclamation projects generally, and for this legislation in particular. The duties of the Secretary of the Interior in the Truckee-Carson Basin today are complex and substantial. This legislation contemplates further activity by the Secretary that would clearly be considered "major Federal actions" within the meaning of NEPA. Since there are significant hydrologic and biologic issues yet to be resolved, it is critical that the integrity and the applicability of the NEPA process be continued. These issues are precisely the type of problems that can best be resolved through the NEPA process. We oppose the waiver provisions in this legislation.

2. The bill would summarily constrain the Secretary's authority under the Endangered Species Act.

Section 113(b) of the bill would declare by legislative fiat that certain actions contemplated by the bill will comply with the Endangered Species Act (ESA), even if, in fact, they do not. We strongly disagree with such a declaration. In several key respects, the bill fails to insure the recovery of threatened and endangered species, which is the fundamental objective of the ESA:

- minimum flows and timing of flows to Pyramid Lake are not established for fish recovery purposes;
- the decision of the Ninth Circuit Court of Appeals sustaining the Secretary's action giving priority to endangered species in the management of Stampede Reservoir would be specifically countermanded;
- critical fish propagation and water management actions to be taken by the Secretary are barred pending the consummation of a long list of agreements by non-Federal interests delineated in section 107;
- the bill appears to give veto authority over fish recovery programs off the Pyramid Lake Indian Reservation to the tribe, the State, and any other affected party;
- the bill could be interpreted as giving the Secretary's authority for fish recovery programs to the tribe on the reservation, if the tribe wished to exert jurisdiction over such programs.

In addition, exempting provisions of this bill from the requirements of the ESA circumvents exemption procedures already established by the ESA. Thus, in our view, the language of the bill needs considerable strengthening to ensure that the endangered species of the Truckee-Carson Basin will achieve a timely recovery. The declaration of sufficiency now contained in the bill is unacceptable.

3. The bill fails to insure that important wetland values will be maintained upon implementation of the legislation.

Wetlands in the project area provide important habitat for shorebirds and waterfowl of the Pacific Flyway. The significance of these desert wetlands is borne out by the fact that the Lahontan Valley supports 75 percent of Nevada's waterfowl use days. Wetland impacts should be recognized and mitigated concurrent with the implementation of other authorized activities.

4. The bill fails to emphasize recovery of Pyramid Lake fish resources.

The bill contains language simply to "improve the biological status" of the fish. The result of efforts to restore endangered or threatened species must be the re-establishment of naturally reproducing and self-sustaining populations so that the species no longer is threatened with extinction and thus can be removed from the list of endangered and threatened species. Simple improvement of a species' biological status can fall short of species recovery because hatchery production of fish, as emphasized by the bill, can improve biological status without resulting in recovery if the species cannot reproduce naturally.

5. The bill fails to consider provisions of the recovery plan adopted by the Secretary for cui-ui and the draft recovery plan for Lahonton cutthroat trout.

Currently available recovery plans for Pyramid Lake fish resources detail information needs and actions to be taken (and underway currently) to bring about biological recovery of these fish. The bill would require the Secretary to "formulate and commence a fish enhancement program" yet fails to recognize the program underway already.

6. The bill fails to ensure adequate flows of water for recovery of Pyramid Lake fish resources.

Maintenance of an "average" elevation in Pyramid Lake alone as provided for in the bill will benefit fisheries only if delivery of water into the lake is timed to coincide with the fishes' needs during their annual spawning cycle. The bill should mandate specifically that water flows into the lake be timed to provide flows adequate to achieve fishery purposes. Water needs for the fishery should be established based on information considered most accurate prior to each spawning year when project operating criteria are established. Project operating criteria should be developed carefully with fishery management goals as the top priority. Although further information is needed to better define minimum flow and water quality needs for cui-ui, a total of 240,000 acre-feet of water currently is thought needed by the species during the spawning season and period of juvenile residence in the river for effective reproduction. Because about 400,000 acre-feet of water will be needed to maintain Pyramid Lake at a constant level, on the average, water needs for fisheries are well within the total system needs.

7. Authority to conduct weather modification programs raises regional and national issues.

The broad new authority contained in section 105(a)(5) for the Bureau of Reclamation to implement a weather modification program should be eliminated. Weather modification raises questions of liability, water rights, and environmental impacts that need to be answered in a regional and national context before such activity should commence over the Truckee-Carson Basin. Authorization should be reconsidered upon completion of an Environmental Impact Statement. Unfortunately, section 105 is exempt from NEPA as the bill is presently drafted.

8. The amount of funding authorized for the Pyramid Lake Settlement Fund may be inadequate.

Some estimates of the costs to be incurred under the bill run to nearly twice the $29 million authorized for the Pyramid Lake Settlement Fund. Notably absent from this pool of Federal and state funds is any contribution from the beneficiaries of any of the three Reclamation projects in the Truckee-Carson Basin. Yet the remedial program contained in the bill to restore threatened and endangered species has been necessitated by the diversion of water for other uses and the resulting degredation of essential habitat. It is reasonable to expect that water users will shoulder some portion of the cost of such a remedial program. Unfortunately the bill fails to establish such a funding requirement, and even goes so far as to waive an existing outstanding repayment obligation.

9. The interstate compact contained in Title II is obsolete.

Ratification of the proposed California-Nevada Interstate Compact by the two states predated several events of great significance to the Truckee-Carson Basin, including the enactment of the Endangered Species Act. The compact neither addresses nor responds to water quality issues or fishery problems. Neither fishery flows nor lake stabilization are identified as beneficial uses of water. The compact would delineate added water rights within the Lake Tahoe and Truckee-Carson Rivers system. Water availability to Pyramid Lake and Lahonton Valley wetlands would appear to be reduced by enactment of title II, making recovery of fish difficult to achieve. We believe that the compact needs to be updated, and should be resubmitted by the two states after such revision.

CONCLUSION

The entire hydrologic system of the Truckee-Carson Basin has been placed under severe stress over the years. Historic water policies at the state and Federal levels have produced many unwelcome environmental side effects. Large quantities of water are dedicated to the irrigation of relatively low value forage crops, and more water is sought by a rapidly growing urban area where residential customers are not even metered. Under these circumstances, we believe this committee should reject the bill before you. The parties to the Pyramid Lake Settlement should be charged by the committee to go back to the negotiating table and explore additional options with the Secretary for resolving ourstanding claims without jeopardizing further the natural resources of the Truckee-Carson Basin.

Thank you for the opportunity to present these views.

NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

Resolution No. 30

NEVADA WETLANDS AND WATER CONSERVATION

WHEREAS, the Carson and Truckee River Basins of Western Nevada contain aquatic and wetland habitat that is used by many species of fish and wildlife; and

WHEREAS, the Stillwater Wildlife Management Area, jointly managed by the U.S. Fish and Wildlife Service and the Nevada Department of Wildlife, and Carson Lake, under custody of the Truckee-Carson Irrigation District, are valuable wetlands in the Lahontan Valley; and

WHEREAS, the Lahontan Valley, the terminus of the Carson River, presently supports 75 percent of the state's waterfowl use days and provides habitat for shorebirds and other migratory birds of the Pacific Flyway, including but not limited to important nesting and/or feeding areas for redhead and canvasback ducks; habitat for nesting whitefaced ibis and feeding areas for white pelicans, both considered sensitive species; and foraging area for many species of raptors; including wintering Bald Eagles; and

WHEREAS, water rights claims of the Pyramid Lake Paiute Tribe with respect to the Pyramid Lake Indian Reservation are the subject of many lawsuits and administrative proceedings; and

WHEREAS, Pyramid Lake and the Truckee River, the lake's primary source of water, together support a population of the threatened Lahontan cutthroat trout and the endangered cui-ui lakesucker, and the lake also contains Anaho Island National Wildlife Refuge which provides nesting habitat for white pelicans, cormorants, herrons, gulls and terns; and

WHEREAS, there is currently under preparation draft legislation entitled "Pyramid Lake Restoration and Water Rights Settlement Act," for the purposes, among others, of settling Indian water rights claims; enhancing habitat for threatened and endangered species; and authorizing the modification of various features of Bureau of Reclamation water projects; and

WHEREAS, parties to the initial negotiations drafting this legislation have proposed that these activities be implemented without regard to the National Environmental Policy Act; and

WHEREAS, the proposed act would authorize the Secretary of the Interior, in lieu of mitigation, to revoke the custodial status of the Stillwater lands and quitclaim title to the State of Nevada upon purchase by the State to operate the area without the U.S. Fish and Wildlife Service and turn over grazing and pasture proceeds from the lands to the Truckee-Carson Irrigation District;

NOW, THEREFORE, BE IT RESOLVED that the National Wildlife Federation, in annual meeting assembled March 15-18, 1984, in Atlanta, Georgia, urges that the State of Nevada and the United States Congress incorporate the following provisions in any further legislative or administrative action regarding the land and water resources of the Truckee and Carson River Basins:

1. The Department of the Interior shall maintain its responsibilities toward migratory birds by continuing its role in the joint operation of the Stillwater Wildlife Management Area;
2. Sufficient flows shall be insured, through the purchase and/or allocation of water rights where necessary, to provide wetland protection and to otherwise enhance fish and wildlife habitat; and,
3. The planning and implementation of any Federal water resource development projects or project features shall be undertaken pursuant to all currently applicable procedures, including:
    a. the preparation of feasibility reports;
    b. the concurrent mitigation of any damages to fish and wildlife habitat;
    c. the application of all relevant environmental statutes and executive orders, including the National Environmental Policy Act; and,
    d. the full reimbursement of all reimbursable costs incurred by the Federal government in accordance with existing law.

NEVADA WILDLIFE FEDERATION, INC.
An Affiliate of the National Wildlife Federation
820 EAST SAHARA AVENUE · LAS VEGAS NEVADA 89104

September 26, 1985

Ref: S 1558

Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Andrews:

The Nevada Wildlife Federation, an affiliate of the National Wildlife Federation, has over the years attempted to keep informed on the efforts to resolve the conflicts on the use of Truckee River water and the Newlands Project. In fact the National Wildlife Federation in annual meeting, Atlanta Georgia, 1984 adopted resolution 30 expressing concern over the language of the then proposed Settlement Act and suggested points to consider in regard to the Lahontan Valley wetlands.

We are not opposed to the attempts to resolve the issues, however, we cannot support S 1558, "The Pyramid Lake Paiute and Truckee River Settlement Act of 1985", as presently written. We have serious concern over what we consider to be a grave weakness in the bill; namely, lack of attention to the wetlands of Lahontan Valley.

It is our impression that attempts on the part of the State of Nevada and the Truckee Carson Irrigation District (TCID) negotiators to include provisions to protect those wetlands commensurate with their public value have been rebuffed by the other negotiators. That was our concern in 1984, generating resolution 30, and that is our concern today. While the Act at present, at the insistence of the State and TCID, does include under Section 105, Water Management subsection 3, provisions for mitigating the effects of a rehabilitation and betterment program in the Newlands Project that the Secretary may undertake, we do not feel this is sufficient nor does it consider the effect of project operating criteria. We suggest that Congress incorporate in the Act a recognition of the wetland values to impress upon those who implement the Act and those who develop the operating criteria, that their results must reflect Congressional findings.

To accomplish this we respectfully suggest the following brief amendments:

Amend Sec. 101 - Congress finds that - (add a new 9 and 10 at the end of Sec. 101)

"(9) . . . the wetlands of Lahontan Valley and the Fernley Sink area are significantly important to migratory birds in the Pacific Flyway and that the Lahontan Valley wetlands support 75% of Nevada's waterfowl use days

(10) . . . in carrying out the purposes of this act, adverse impacts to Lahontan Valley wetland habitat will be mitigated."

Language such as this would, we feel, leave a Congressional trail recognizing the value of those wetlands, and inform waterfowl hunters, bird watchers, and other concerned citizens that the United States recognizes its Public Trust Responsibility over these wetland resources in addition to the Secretary of Interior's already mandated responsibilities which are not now reflected in this Act.

One additional amendment is suggested for Sec. 102, Definitions:

Add a new definition (11) at the end of Sec. 102, "the term 'mitigation' means to secure water rights, land, structures and the funding necessary to replace wetland productivity lost due to this Act."

This amendment would compliment and strengthen the mitigation provisions of Sec. 105 mentioned above.

In essence, Chairman Andrews, we feel the bill as written needs these suggested amendments to be acceptable to the interests we represent. The wetlands are historical recipients of water just as is Pyramid Lake and we support the concern demonstrated in the Act over the Truckee River-Pyramid Lake fisheries. The wetlands contribute to the economy of western Nevada and the recreational opportunities of residents and nonresidents alike. Migratory birds have lost the use of Winnemucca Lake National Wildlife Refuge and we would not like to see any further degrading of Nevada's limited wetlands.

In light of the current downward trend in the continental duck populations we do not need added wetland losses to contribute to this trend, therefore, it is incumbent upon someone to correct the weakness in the proposed Act. We see Congress as the only body in a position to strengthen this proposal.

Thank you for your consideration.

Sincerely,
Dr. John Leitch, President
By,

Fred E Wright

Fred E. Wright,
Legislative Representative

FEW/rj

Mr. Taylor. Mr. Tilt, do you have anything to add?

Mr. Tilt. Yes.

STATEMENT OF WHITNEY C. TILT, NATIONAL AUDUBON SOCIETY

Mr. Tilt. Our statement is very closely allied to the comments that Mr. Osann has just presented with us today. So, I will not go through ours. I would like to make a few comments in addition to the remarks that I have entered into the record.

There are serious problems with this bill as laid out already in both our testimonies, and many others here today, none of which were probably more eloquently forwarded than by people such as Mr. James, from the tribe.

While heralded as a framework for agreement, little or no assurance for either fisheries or wetlands, or even the tribe is given in this legislative fix. This is especially true as we look at the increased M&I needs that are forecasted. Increased competition for water rights that do become available between the Secretary of the Interior and other municipal users will only exacerbate this problem.

The lack of formal participation by the Fish and Wildlife Service, the agency which is mandated to look after endangered species and has a role in wetlands protection as well, together with the traditional infighting that exists between the Service and the Bureau of Reclamation—who represents DOI in this agreement—also bodes poorly for the interests of the fisheries and wetlands.

The context of these magical agreements that are alledgedly capable of erasing and settling 75 years of conflict and litigation is missing from this bill. So, I suppose we are supposed to believe in the healing powers of these agreements still to be reached. I would like to see what some of these agreements yet to be reached would look like before I feel the U.S. Congress should be asked to act on them.

The cui-ui is not going to become extinct without the Settlement Act in front of us, as the present situation actually provides more protection for it. As Mr. Osann already mentioned, there are recovery efforts underway. In fact, perhaps the cui-ui has more leverage under the existing scenario than it would under this bill, as presently proposed.

Finally, observance of the proceedings here today provides ample evidence of the needs for the disclosure provisions of NEPA. If we had all come into this room today with an EIS document, that all of us had already participated in and entered onto that record, if nothing else, at least we would be dealing with similar documentation.

And that basically concludes my remarks. And as we're the last ones here today, which is probably appropriate since we—the environmentalists—have been accused of being the tail that wags the dog, I would like to offer to the select committee, our——

Mr. Taylor. I'm not sure how to interpret that.

Mr. Tilt. I would like to offer our participation in resolving this conflict. We have no interest in holding it up any further.

Mr. Taylor. Thank you.

[Mr. Tilt's prepared statement, on behalf of the National Audubon Society, follows:]

National Audubon Society
NATIONAL CAPITAL OFFICE
645 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003 (202) 547-9009

STATEMENT OF
THE NATIONAL AUDUBON SOCIETY

ON THE

PYRAMID LAKE PAIUTE AND TRUCKEE RIVER SETTLEMENT ACT
S. 1558

BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS

PRESENTED BY
WHITNEY C. TILT
OCTOBER 2, 1985

TESTIMONY BEFORE THE SENATE SUBCOMMITTEE ON INDIAN AFFAIRS

WEDNESDAY, OCTOBER 2, 1985

Mr. Chairman and members of the Select Committee, I am Whitney Tilt, Wildlife Specialist for the National Audubon Society. I appear today on behalf of the National Audubon Society to urge the Select Committee on Indian Affairs to review carefully the provisions of S. 1558, and to consider the following comments in evaluating this Settlement Act's impacts on area fisheries, wetlands, and the Pyramid Lake Paiute Indian Tribe. Audubon is a nation-wide conservation organization of one-half million members. High among Audubon's priorities are the protection of wildlife and wildlife habitat.

OVERVIEW

The National Audubon Society recognizes that the proposed Pyramid Lake Paiute and Truckee River Settlement Act of 1985 is the result of hundreds of hours of negotiation, and may well represent the best attempt since 1902 to settle the water conflicts in western Nevada. Audubon also realizes that this negotiated settlement is like a house built of cards where any major amendment to the bill by one party could cause another party to withdraw its support and the house to collapse. Audubon further recognizes the close association between the Paiute Tribe and the fisheries of Pyramid Lake, and applauds the Tribe's efforts on behalf of the cui-ui and Lahontan cutthroat trout.

However, there are of number of major issues in this proposed settlement legislation that cause us considerable concern with respect to the present and future protection of wildlife and wetland resources in the Truckee/Carson system and nation-wide. For these reasons, which are set out in greater detail in my testimony, we oppose the legislation in its present form. In our testimony, Audubon will focus on three specific areas of concern: 1) the long-term survival of two species listed under the Endangered Species Act, the endangered cui-ui and the threatened Lahontan cutthroat trout; 2) mitigation of destroyed wetlands; and 3) the future of water management and allocation in the Truckee/Carson riverine systems.

THREATENED AND ENDANGERED SPECIES

The cui-ui (Chasmistes cujus) belongs to a genus of sucker-like fish that represents three species, each restricted to separate drainage systems. The short-nosed sucker is confined to the Klamath Lake system of California and Oregon. The June sucker is restricted to Utah Lake. The cui-ui is only found in Pyramid Lake.

The cui-ui has two important characteristics pertinent to our discussion today: its strong anadromous tendencies (movement from saline waters upstream to spawn in freshwater), and the species' relatively long life (up to 40 years). During this century, the strong anadromous tendency has been hampered by the loss of stream flows that has prevented the fish from gaining access to the lower Truckee River to spawn on a regular basis (since completion of the Derby Dam in 1905, the lake's level has declined nearly 80 feet). For shorter-lived species, this loss of access to spawning grounds in low water years would be catastrophic, and such was the case with the celebrated sportfish, the Pyramid Lake cutthroat, which became extinct in the early 1940's as a result of habitat degradation and the inability to gain access to the river to spawn. The long life span of the cui-ui, however, has enabled the species to survive on dominant year-classes that may come decades apart. Currently 95% of the spawning cui-ui population is comprised of the 1969 year class.

The Lahontan cuttroat trout (LCT), Salmo clarki henshawi, is considered threatened in Pyramid Lake, where its continued presence is secured only through hatchery efforts. It appears unlikely that a self-sustaining natural population can be restored to Pyramid Lake due to a number of factors, including different water needs than the cui-ui, competition from introduced trout species, and loss of spawning access and habitat. The species, however, is found in other portions of the Truckee/Carson river systems and the Humboldt River system.

As currently worded, the proposed settlement bill seeks to resolve water allocation conflicts and to distribute benefits among a number of parties including the Pyramid Lake Paiute Tribe, Cities of Reno/Sparks, the Truckee Carson Irrigation District, and the Department of Interior's Bureau of Reclamation. The survival and future management of fisheries and wetlands is left to the benevolance of the parties involved, not to any provision of the bill. While the Tribe has been, and will likely continue to be, the primary champion of the cui-ui as a result of its close economic and cultural ties with the fish, the bill should explicitly state that recovery of the cui-ui is a priority of the legislation, rather than leave fisheries management to the transient and changing goals of the negotiating parties over time. The U.S. Fish and Wildlife Service (FWS), lead federal agency responsible for the management of threatened and endangered species with oversight responsibilities over our nation's wetlands, has never been a party to the negotiations. Therefore, it is not surprising that the Service's interests and mandate are not adequately represented in the settlement before us today.

An additional matter of considerable concern to Audubon nationwide, but particularly in the arid and semi-arid west, is the preservation of sufficient water for fish, wildlife and other natural resources. We view with alarm the increasing clash between consumptive water claims and maintenance of instream flows for habitat preservation. Such a clash is very evident in this legislative proposal and does not seem to be resolved in a manner sensitive to the biological needs of the fishery resources.

Let me elaborate on these introductory remarks.

GENERAL COMMENTS ON THE SETTLEMENT ACT

I. FISHERIES

The bill provides that the Bureau of Reclamation (BR) represent the interests of the Department of Interior, including the interests of the Fish and Wildlife Service and Bureau of Indian Affairs (BIA). An examination of BR's record of representing FWS, and honoring commitments to the Service is troubling. FWS is the agency charged by Congress with the management of the nation's endangered species and, under §404 of the Clean Water Act, has a active role in protection of the nation's wetlands. With the proposed exemption of this bill from the Endangered Species Act, the FWS will play no direct role in the management of the Truckee River/Pyramid Lake resources, except that consented to by the negotiating parties. As I will discuss later in this testimony, Audubon opposes such an exemption and, in addition believes that the Service should be named a party to the settlement agreement in the legislation itself.

Seasonal stream flow appears to be the critical factor in providing for the cui-ui and LCT spawning. The task of assuring adequate water in a timely fashion is left solely to the negotiators in the current bill. Such water is to be provided through an approved Operational Criteria and Procedures (OCAP) and water management system. But details of the OCAP and water management system are not part of the bill, so it is currently impossible for Congress or other interested parties to evaluate the adequacy of such a program, especially with regard to maintenance and enhancement of fishery resources.

What guidance the bill does give on ensuring adequate stream flow is provided in §104, which provides that average water flows not fail below a specified target. This section fails to address the biology of the fisheries, which would mandate a combination of water flow and minimum water levels adjusted on a seasonal basis in the following way:

1) sufficient seasonal water flow to attract the spawning aggregate to the head of the lake;
2) water levels at least 3810 feet above MSL to allow the fish to traverse the delta and enter the river for spawning; and
3) adequate river flow in June to flush newly hatched juveniles back into Pyramid Lake.

If precise information is not available on what these levels should be, then the bill should provide a mechanism for gathering this information before flow allocations are made and irretrievible impacts to the fishery resource occur. If information on the biological impact of minimum flows is known, then these minimum flows, as opposed to average flows, must be set forth in the bill.

In addition, §§106(b)(4) and (5) on fish propagation effectively limits the Department of Interior's ability to manage the fisheries. The Secretary's existing responsibility to develop programs for endangered species protection and enhancement should not be restricted by the proposed virtual veto power of the Tribe and other outside groups. This is not to suggest that the Tribe should not maintain primary management responsibility for the Pyramid Lake fisheries, but a balance between the national interests reflected by the

Department of Interior and regional interests reflected by the other negotiating parties must be found.

Title II of this bill seeks the consent and approval of Congress to the California/Nevada Interstate Compact. Such approval will establish additional water rights and effectively reduce water availability to Pyramid Lake and the Lahontan Valley wetlands. Currently, these natural systems are the beneficiaries of unappropriated waters. As a result of the unquantified impacts of these appropriations, and to implement Title I's expressed commitment to fisheries, language should be inserted in the bill that states nothing in Title II shall prevent the implementation of any agreements entered into or measures taken pursuant to Title I. An example of the potential conflict between the two titles of the bill is found in Article VI of the Compact that allocates 6,000 acre-feet of water from Stampede Reservoir to California. This water presently flows to Pyramid Lake. By so proposing, Title II creates a clear conflict with the fisheries enhancement intent of Title I. In any event, water from this system should not be newly allocated under this agreement when to do so counters existing federal endangered species policy and the mandate of §404 of the Clean Water Act to protect wetlands.

II. WETLANDS

Though fisheries are given a low priority in this bill, wetlands receive even less consideration. A brief historical note here is enlightening. Prior to the building of the Newlands Project, commencing in 1905, Pyramid Lake overflowed into Winnemucca Lake, some 25 miles long and four miles wide. So rich were the wetlands and associated wildlife values of this area that Winnemucca was designated a NWR in 1936 by Executive Order. Unfortunately, water diversion had increased rapidly since 1905, and by 1938 Winnemucca Lake was permanently dry. With its water gone, Winnemucca was a wildlife refuge in name only, and was offically removed from the NWR system in 1966.

This illustrates the delicate balance between water and wetlands in western Nevada. According to Nevada sources, 75% of the wetlands in the Lahontan Valley have been lost as a result of reduced water flows, even though the waters of the Carson have been supplemented by the Truckee River. Currently, approximately 32,500 acres of wetlands exist in the Lahontan Valley, requiring an estimated 155,000 acre/feet of water on an annual basis for maintenance of the existing wetlands. These remaining wetlands are a vital resource for a wide range of indigenous and migratory wildlife.

Section 105 does provide for the "improvement" of the Stillwater WMA and Carson Lake Pasture to mitigate the "rehabilitation and betterment" of the Newlands Project, but the bill fails to: 1) define the extent of wetlands mitigation authorized (e.g., is it to be equivalent to the acreage of wetlands lost since establishment of Newlands Project?); 2) consider additional mitigation needs (such as those resulting from a new OCAP); 3) describe how the mitigation will be achieved; and 4) address the long-term maintenance of these wetlands (such as the establishment of an explicit reserved federal water right for Stillwater WMA).

Section 108 establishes a "Pyramid Lake Settlement Fund," consisting of a one-time contribution of $29 million from the federal government and the State of Nevada, to be used to carry out the purposes of the proposed settlement legislation. Such funds are clearly not adequate to carry out the purposes of this bill, not to mention necessary activities for fisheries and wetlands not outlined in this bill. FWS personnel familar with Pyramid Lake estimate necessary funding to approach $66 million. Such an estimate does not even begin to consider the payment of penalties to the Tribe for failure to deliver water (§109(a)) or pay-back to Truckee Carson Irrigation District (TCID) for lands taken out of irrigation (§ 105(h)). The needs of fish and costs ~~of~~ wetland mitigation alone will exceed the size of the proposed fund, as shown below:

PROJECT	COST (In millions)
Newlands Project Rehabilition	$16
Lower Truckee River Restoration	13
Marble Bluff Fishway	18
Wetland Compensation/Mitigation	10
Water Purchases	5
Fish Studies	2
State Hatchery Development	2
TOTAL	$66

The failure of the proposed Settlement Act to take account of wetland and fishery needs is a serious deficiency of this legislation.

III. EXEMPTIONS

Section 113(a) states that the actions taken by the Secretary to implement the Act shall be exempt from the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321). Apparently believing that the proposed Settlement Act has adequately dealt with the environmental interests of all parties, including fisheries and wetlands, proponents of this legislation argue that complying with NEPA will only slow down efforts to propagate the cui-ui, and that the fish will be extinct by the time an environmental impact statement (EIS) is completed. These arguments seriously misconstrue the EIS process, and cannot prevail because of the regional and national consequences of exempting these types of activities from the law's requirements. These arguments are even less defensible in the current situation where there are no other public disclosure mechanisms in the bill.

Audubon opposes unwarranted exemptions to NEPA, as in this instance. NEPA is a full disclosure law. The statute requires that all major federal actions significantly affecting the quality of the human environment be accompanied by a detailed impact statement to aid the agency's decisionmaking processes and to advise other interested agencies and the public of the environmental consequences of planned federal action. Beyond the requirement contained in §102(2)(C) to prepare an EIS, NEPA requires all federal agencies to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves conflicts concerning alternative uses of available resources." §102(2)(E). This requirement, like the requirement to prepare a detailed environmental impact statement under §102(2)(C), seeks to ensure that each agency decisionmaker has before him or her all possible approaches to a particular project. Only in this fashion is it likely that the most intelligent and optimally beneficial decision will eventually be made. Consistent with this view of the law, implementing regulations promulgated by the Council on Environmental Quality (CEQ) require that agency consideration of environmental factors occur throughout the decisionmaking process and that preparation of an EIS occur at the earliest possible time in the decisionmaking chronology.

Without question, many of the activities contemplated by the legislation could trigger the requirement to prepare an impact statement under NEPA. In fact, there is a serious legal question as to whether the legislation itself should be accompanied by an environmental impact statement because of its potential impact on the Truckee Carson environment (see, §102(2)(C)). Two examples of these activities suffice for this purpose:

1. Section 105(a)(5) states that the Secretary of Interior may "conduct weather modification programs and other programs to augment the flows of the Truckee and Carson Rivers." In the arid Great Basin where weather modification could have dramatic consequences for various resources, an assessment of the potential environmental impacts is clearly called for. These impacts should be brought to the attention of interested federal and state agencies as well as members of the public. Only compliance with NEPA will assure that result.

2. Sections 105(c) and (d) provide minimum allotments for municipal, industrial and agricultural water users on execution of a contract agreed upon by the negotiating parties, while stipulating that "there shall be no release from Stampede Reservoir made for fishery purposes to the Lower Truckee River." This language contains no specifics as to how it may eventually be implemented. One can posit a series of scenarios where one as opposed to another approach might have dire consequences for the river's fish resources. Only compliance with NEPA will assure a thorough analysis of various alternative approaches to implementing this provision and their relative costs and benefits as well as public disclosure of the results of that analysis.

Fears that compliance with NEPA will lead to endless delays and extinction of the cui-ui are misplaced. The purpose of the proposed legislation is to resolve decades of conflict. Compliance with NEPA is consistent with that result, as it will assure that the parties to the agreement, as well as the general public and interested federal and state agencies, have full disclosure of the environmental consequences of various approaches to implementing the bill's provisions as well as possible alternatives to those approaches and their comparative costs and benefits. This process will give further legitimacy to the settlement agreement, and assure that both the spirit in which it was concluded and the concern for the natural resources at issue are carried forward into action. NEPA will assure that all interested parties, for example other federal (eg., the U.S. Environmental Protection Agency), state and local agencies, as well as the general public have an opportunity to contribute to the process assuring a sounder result.

The application of NEPA to this legislation will assure that critical information is gathered on this extremely complex ecosystem -- information which is now sparse to non-existent. Studies including BR's operating model for Pyramid Lake and FWS's work on establishing minimum survival levels for the cui-ui are based more on assumptions than on hard data. Potentially affected habitats include Stampede, Boca and Lahontan Reservoirs, Truckee and Carson Rivers, Pyramid Lake, several wildlife refuges and wildlife management areas, not to mention the endangered cui-ui. The future water needs of the cities Reno/Sparks and the irrigating needs of industry and agriculture are also involved.

Application of NEPA to these actions does not necessarily mean delay, because, under CEQ's regulations, preparation of an impact statements must start at the earliest point in time that a recommendation or proposal for a major federal action significantly affecting the quality of the human environment occurs and then accompany that recommendation through the decisionmaking process until it the agency's preferred alternative is selected.

Audubon believes NEPA should continue to apply to the various actions taken by the Secretary under the bill; and indeed, that the legislative proposal itself should be accompanied by an EIS, because it too may have a significant adverse environmental impact.

Section 113(b) proposes that implementing activities under the agreement be exempted from the Endangered Species Act (ESA). We oppose this exemption as well, as being completely unwarranted and counter-productive of the intent of that statute.

It is clear, however, from a quick glance at this bill, that the proposed legislation does not provide sufficient priority and resources to ensure the continued existence of the two listed species. In addition, the agency best suited to participate in management decisions concerning Pyramid Lake fisheries, the FWS, is excluded from that process; the interests of endangered species are instead represented by the BR. Under the ESA, if it were allowed to operate in this instance, the BR would enter into Section 7 consultations with FWS when listed or candidate species are at risk, thus ensuring that the needs of the endangered species are given consideration in any decision that might affect their continued existence or restoration.

The apparant rationale behind the proposed ESA exemption is to prevent the alleged costs and delays of litigation by outside parties which might be brought under the ESA. These concerns are unwarranted for the following reasons.

In the first place, there is an existing statutory mechanism in the ESA to exempt specific federal project's of regional or national significance from the Act's application when project benefits "clearly outweigh the benefits of alternative courses of action" (Pub. L. 95-632, 92 Stat. 3757). A statutorily appointed Endangered Species Committee, comprised of the Secretaries of Agriculture, Army and the Interior, the Administrators of EPA and the National Oceanographic and Atmospheric Administration, the Chairman of the Council of Economic Advisors, and a Presidential appointee from the affected state(s) determines whether such an exemption should be granted. Congress amended the ESA specifically to respond to the Supreme Court's decision in TVA v. Hill (the Snail Darter case, 437 U.S. 174 (1977)) to avoid such future conflicts. Even in the furor created over the Tellico Dam decision, Congress was intent on protecting endangered species and did not succumb to a wide open exemption for even the snail darter. In fact, the snail darter did not receive an exemption from that Committee.

The Tellico Dam exemption procedure set forth in the ESA can be applied to any of the actions undertaken by the Secretary to implement a Pyramid Lake settlement act. Exempting these activities at this point in time from the application of the ESA is, therefore, redundant with the ESA exemption procedure and prejudges the advisability of such an exemption.

In the second place, the proposed exemption to the ESA is premised upon the faulty assumption that the bill's contents are sufficent to recover the cui-ui and mitigate wetland losses negating the need for the ESA to apply. Such an assumption is faulty because it assumes:

1) perfect knowledge of the resources involved;
2) the status quo within the existing negotiating parties will remain;
3) perpetual availability of sufficent water; and
4) that artifical propagation of an endangered fish through hatchery techniques is desirable and can be defined as "recovery."

My preceding comments should indicate the speciousness of these assumptions.

For these reasons, Audubon believes strongly that the provisions of the ESA should apply to actions taken under any Truckee/Carson Settlement Act.

SPECIFICS CONCERNING THE SETTLEMENT ACT

Currently, as the Settlement Act is written, it is little more than an agreement to agree. As such, the bill relies on the numerous parties having faith in one another over one of the most hotly contested issues in natural resource management. Notably, the party representing wildlife is not, and has not been, included in the negotiations. Accordingly:

1) The Pyramid Lake Settlement Act should include the proposed compacts and OCAP programs before Congress is asked to pass on such legislation.

2) The bill should be amended to authorize the federal government to sue for monetary damages should any of the Settlement Agreement's provisions be breached by any of the parties who receive a benefit from its terms. More specifically, the success of this bill has been linked to the creation of sufficiently strong incentives to overwhelm any resistance to its specific terms. An example of such an incentive is found in §111(a), which releases the Newlands Projects from the provisions of Federal Reclamation law and passes the project over to the TCID without repayment obligations, giving TCID complete operational control of the Newlands Project -- a sizable incentive to secure TCID's support of the agreement. Failure to comply with OCAP is apparently enforcable by any of the parties. However, should TCID not provide sufficient water to Pyramid Lake to fulfill the provisions of Section 104, it is the federal government that pays the Tribe damages, not TCID -- not much of an incentive to assure TCID's compliance with that provision of the bill. Authorizing the federal government to seek money damages from breaching

parties to the agreement with respect to the the law's fishery protection and enhancement provisions might assure more effective compliance with those provisions. At minimum, the government would thus rescind its role as the insurer of lost water resources the control of which is out of its hands.

3) §101. Congress should include in the purposes of this Title, that "to aid recovery of species listed pursuant to the ESA." and should recognize as one of the goals of the Settlement Act is the mitigation and maintenance of wetland habitat for waterfowl and other wildlife.

4) §102(7). The definition of "enhance" should be strengthened to require natural spawning capable of maintaining and/or increasing current populations.

5) §104. Water delivery should reflect the seasonal flow and water level needs of the cui-ui and LCT.

6) §105. Wetlands mitigation and maintenance should be clearly defined and the priority of this effort clearly set forth.

7) §105(3). The definition of "to mitigate fully" (Section 105(3)) should be that recommended in the Fish and Wildlife Coordination Act.

8) Establishment of OCAP for the Lahontan Reservior should seek to establish a reserved federal water right for Stillwater WMA through measures such as the prevention of overflow spills by lowering the level of the reservior.

9) §105(b)(c). The terms of any perpetual contract and the priority that such contract grants to different uses, including releases for fishery and wetland purposes, should be part of the Settlement Act.

10) §106(a)(1). "Fish enhancement program" should be changed to "Fish recovery program."

11) §113(b)(2). The existing language reads, "...for the purpose of constructing or modifying facilities or structures to enhance the Pyramid Lake fish resources." The language should be changed to read "... for the purpose of developing additional enhancement programs for Pyramid Lake fish resources." The Secretary should not be limited to a "hatchery" as opposed to a natural spawning approach.

12) §204. Title II should be made to read in pari materia to the purposes of Title I, and not create goals in conflict with those of Title I.

Thank you for the opportunity to testify before this Committee. I would be more than glad to answer any questions that you may have.

Mr. TAYLOR. I think a concern that is manifested by the people that are asking either for a waiver of NEPA and the Endangered Species Act, or at least a statement of compliance in the legislation, is that the NEPA process could drag out interminably, that litigation could upset negotiated settlements that maybe put in place.

I know that the National Wildlife Federation and the Audubon Society have a very keen interest in the cui-ui and just the environmental situation in general. It does appear that even if we were to move forward on this legislation, there's a whole year of discussions that have to take place. And frankly, based on amendments that have come into us, obviously there is going to have to be discussion among the parties.

It seems to me that the Nevada Wildlife Federation may be able to sit in on some of those negotiations out there in the State, and perhaps we could build a sufficient record that in fact the Wildlife Federation and the Audubon Society, and others would feel comfortable that the legislation or the agreements are in fact doing as much as possible to address the needs of the fish and the environment.

Mr. TILT. NEPA doesn't require going back to base one. Any information that's already been gathered can be very quickly and readily be brought up to speed under the NEPA process.

Mr. TAYLOR. Would you have any conception at all of how much time might be involved in this particular case?

Mr. TILT. I think it would depend on the parties, many of whom are behind us, on how fast they can cooperate in bringing this forward. But clearly the NEPA process will sift out a lot of the conflict that has been brought to you today. It doesn't necessarily have to hold up all other actions while it's being prepared. It is designed to run with the other actions provided for under this proposed agreement.

Mr. OSANN. I think the notion that the preparation of an environmental impact statement could drag on interminably takes a pretty dim view of the competence of the Bureau of Reclamation to prepare such a report. They prepare a lot of these reports, and I'm not sure that that view is necessarily warranted.

We've certainly been quite critical of a number of projects and a number of EIS's, but nevertheless, I think they can handle the NEPA process and produce an EIS on a timely basis.

I think the message or the point that you made with regard to opening up the discussions in Nevada among the parties, and other interested parties, is a useful one and would be useful for the committee to convey to the parties to the negotiations, because there has not been an open process. The Nevada Wildlife Federation has not been at the table, they've not been invited. And I think the agreement that has been struck is evidence of the fact that some of the concerns that are in fact integral to the operation of this system, hydrologically and biologically, that are of major concern to sportsmen and other conservationists in the State, have not been accomodated.

So we would welcome the direction to the parties, whatever direction the committee might convey, to open up the process.

Mr. TAYLOR. Well, we'll certainly try to urge that, and perhaps at the District of Columbia level as well, because there is a strong political interest in the Congress on environmental and wildlife questions. And I think that it's wise if we intend to move forward with the bill.

Mr. TILT. Mr. Chairman, one more quick point on the endangered species exemption. Back after the Teleco Dam caused such a furor that led to the 1978 amendment, there was a process for exempting projects from the Endangered Species Act.

Now, if that's felt that the cui-ui deserves such an exemption, perhaps the Nevada delegation should take such a concern directly to the Congress and the Endangered Species Committee, not bypass the ESA through such an agreement such as this. Such was not the intent of Congress when they passed the Endangered Species Act.

Mr. TAYLOR. Thank you very much. We have one other witness that we did not have on the witness list. I think we have another minute or two, if we could get that person on. Norman Harry? Is Mr. Harry still here? Mr. Harry is a member of the council of the Pyramid Lake Indian Tribe.

Mr. HARRY. Thank you, Mr. Chairman.

STATEMENT OF NORMAN HARRY, MEMBER, PYRAMID LAKE PAIUTE TRIBAL COUNCIL AND PYRAMID LAKE FISHERIES BOARD OF TRUSTEES

Mr. HARRY. First of all, I'd like to go on the record stating that I'm not with the ad hoc committee, and I'm not speaking for the council, as the council had already delegated our attorney, our chairman and other council members to express their views.

The testimony I'm about to give is as a concerned council member. I'll start off introducing myself. My name is Norman Harry. I'm a member of the Pyramid Lake Paiute Tribe and reside on the Pyramid Lake Reservation. I serve as a member of the Pyramid Lake Tribal Council and as a member of the Pyramid Lake Fisheries Board of Trustees.

I am here to voice my opposition to Senate bill 1558 and House bill 3213, titled the Pyramid Lake Paiute and Truckee River Settlement Act of 1985, sponsored by Senator Laxalt and Representative Vucanovich.

First, as an elected member of the Pyramid Tribal Council I cannot support this legislation until members of the Pyramid Lake Tribe have had ample opportunity to discuss the terms of the settlement. A referendum vote by tribal members on this issue is pending, and will determine future tribal council direction in regard to the proposed negotiated settlement.

Second, the introduction of S. 1558 and H.R. 3213 is premature. The bill, as written, was submitted without the prior review and consent by the Pyramid Lake Tribal Council. At present, the bill does not provide sufficient guarantees which would preserve and protect Pyramid Lake and its resources.

The Pyramid Lake Tribe must approach a proposed settlement of this magnitude with extreme caution. The decisions we make now will determine the well-being of future generations. Pyramid Lake and the lands surrounding it have ensured the survival of our people for thousands of years. Our rights to the land and the water that flows upon it has existed long before those claimed by any other water users.

Our people have witnessed the first coming of the non-Indian into our territories, and the first non-Indian settlements along the Truckee River. We have fought physical wars and waged legal battles to protect our land and water. We've seen the construction of Derby Dam to divert our water to non-Indian farmers and the U.S. courts uphold the legality of such theft. Rampant growth continues in the cities of Reno and Sparks without secured water rights, and water quality continues to decline. Our history reminds us that we must be cautious.

Without our water, we have nothing. The cui-ui eaters of Pyramid Lake will no longer exist if sufficient water rights are not secured. The Pyramid Lake Tribe will pursue a settlement to the longstanding water wars, but only if the outcome is fair and just.

I strongly urge your opposition to this legislation, as submitted, until adequate guarantees which will respect and uphold the rights of the Pyramid Lake Tribe are included. Thank you.

Mr. TAYLOR. Thank you very much.

Mr. TAYLOR. I don't think I have any questions. I know you have a tribal referendum coming up, and obviously public debate will take place there.

Mr. HARRY. Right.

Mr. TAYLOR. So, I wish you luck on the discussions.

Mr. HARRY. Thank you, Mr. Chairman.

Mr. TAYLOR. Thank you. I think that concludes all of the witnesses, and this hearing will stand adjourned.

[Whereupon, the hearing was adjourned at 5:05 p.m.]

APPENDIX

Additional Material Submitted for the Record

AMERICAN PUBLIC POWER ASSOCIATION
2301 M STREET NW WASHINGTON DC 20037 202/775-8300

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September 30, 1985

Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Andrews:

On Wednesday, October 2, the Senate Select Committee on Indian Affairs will hear testimony on S.1558, a bill to settle certain water rights claims of the Pyramid Lake Paiute Indian Tribe. On behalf of the American Public Power Association and Truckee-Donner Public Utility District, I would appreciate having this letter and attachment made part of the hearing record.

The Stampede Dam and Reservoir are located on the Little Truckee River in Sierra County, California, about 11 miles northwest of the town of Truckee. The dam and reservoir are part of the Stampede Division of the Washoe Project, a project of the United States Bureau of Reclamation. Construction of the dam and powerplant was authorized by the Act of August 1, 1956 (70 Stat. 775) and the powerplant is expected to be commercially operable in fall 1985.

In October,1984, the Western Area Power Administration (Western) solicited applications for allocation of the energy to be generated at the Stampede Powerplant and gave notice that preference would be given to those public power systems and consumer-owned utilities that are entitled to first access under federal reclamation law. Western received two applications, one from the Sierra Pacific Power Company and the other from the Truckee-Donner Public Utility District. In May 1985, Western designated Truckee-Donner PUD as the recipient of Stampede Powerplant energy due to its status as a preference agency.

Truckee-Donner PUD currently buys 100% of its power supply from Sierra Pacific. The allocation of energy from the Stampede Powerplant therefore represents an important energy resource to Truckee-Donner PUD.

Section 105(a)(7) of S.1558 and H.R. 3213 -- as introduced -- threaten Truckee-Donner's allocation of energy from Stampede Dam by authorizing the Secretary of the Interior to withdraw that energy from commercial sale for re-allocation to Sierra Pacific -- a non-preference entity -- to offset power losses that may result from implementation of the Pyramid Lake water rights settlement. By designating Sierra Pacific as a "project load" of the Washoe Project, Sec. 105 (a)(7) circumvents existing reclamation law and allocates energy from a federal hydroelectric facility to a non-preference entity ahead of a qualified preference entity.

The proposed legislation also places an additional financial burden on Truckee-Donner PUD. Section 2(c) of the Washoe Project Act places responsibility for repaying the federal investment in the Stampede Powerplant with Western. Since nothing in H.R. 3213 or S.1558 forgives or modifies this repayment obligation, Western will be forced to allocate that portion of the costs of constructing Stampede Powerplant that correspond to the energy withdrawn from commercial sale to the sole remaining commercial power customer: Truckee-Donner PUD. Thus, Truckee-Donner is placed in a Catch-22 type situation: the more energy it loses to Sierra Pacific, the more its costs to purchase the remaining available energy from Stampede Powerplant increase. It is patently unfair to require a portion of the costs of the proposed water rights settlement to be borne by an entity that does not benefit from that settlement in any way.

Truckee-Donner and APPA recognize the difficulties inherent in constructing a settlement to resolve the conflicting claims to water of the Truckee-Carson River System and we applaud the efforts of the parties and the Nevada Congressional delegation to implement a final resolution of those issues. However, we believe that the current language of Section 105(a)(7) is an unsound, unnecessary departure from federal law that unfairly penalizes Truckee-Donner PUD -- an entity not involved in the water rights settlement.

We therefore urge the Committee to adopt an amendment to Section 105(a)(7) that would authorize the Secretary of the Interior to acquire energy surplus to the requirements of Western's contractual agreements or to reimburse Sierra Pacific for power losses due to the implementation of the Pyramid Lake settlement. A substitute provision is attached to this letter for your consideration. The proposed amendment will allow the Secretary to make Sierra Pacific whole without jeopardizing the rights of Truckee-Donner PUD or any other Western preference customer.

Thank you for your consideration.

Sincerely,

Alex Radin
Executive Director

AR:lb
Enclosure

S. 1558

H.R. 3213

p.8 Sec. 105 a(7)

Strike all after "(7)" through the end of the paragraph and substitute the following:

"after consultation with the Administrator of the Western Area Power Administration (Western), acquire from the Administrator energy surplus to all contractual obligations of Western for any person or entity who becomes a party to the agreements referred to in section 107(a)(10) if, after such consultation, the Secretary determines that such energy is necessary to offset losses associated with the Truckee River hydroelectric powerplants of such person or entity; or to the extent such losses are not offset, the Secretary shall reimburse such person or entity in the amount necessary to compensate such losses."

STATEMENT OF THE STATE OF CALIFORNIA IN SUPPORT OF S. 1558

I. INTRODUCTION

I am pleased to present California's position for the record on S. 1558. This bill would provide the framework for settlement of long-standing water rights disputes on the lower Truckee River. It would also provide for the consent of Congress to the California-Nevada Interstate Compact, once the remaining elements of the Truckee River settlement are resolved.

S. 1558 would have two major benefits to California. First, it would provide for the dismissal of a suit brought by the Pyramid Lake Paiute Tribe of Indians against the State of California and major holders of California water rights to the Truckee River. This suit has placed a cloud on the State's administration of water rights in the Tahoe and Truckee River Basins. Second, and most important to California, S. 1558 would provide for the consent of Congress to the California-Nevada Interstate Compact, when certain conditions of the Truckee River settlement are satisfied. This Compact is the product of nearly 13 years of negotiations between the states, and it was ratified by the Legislatures of California and Nevada in 1970 and 1971, respectively. The Compact makes an equitable apportionment of the waters of the Lake Tahoe Basin and the Truckee, Carson and Walker River Basins to the two states. While the consent of Congress to the Compact has been pending for close to 15 years, the water rights administrators of the two states have complied voluntarily with the Compact's allocations. We feel that the Compact's terms are equitable and that it should receive the consent of Congress without further delay.

We have identified several concerns with the present text of S. 1558, but those concerns may be easily remedied by amendments or legislative history. They are discussed in Parts IV. and V. of this statement. Assuming that those concerns are addressed, we support S. 1558 and urge favorable action by this committee.

II. THE CALIFORNIA-NEVADA INTERSTATE COMPACT

In 1955, the states of California and Nevada decided to negotiate an interstate compact to provide an equitable apportionment of their interstate waters. They recognized that this was required to avoid future controversies as demands increased in both states for the use of very limited water supplies. In the Lake Tahoe and Truckee River basins, for example, Nevada water users were

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Statement of David N. Kennedy, Director of the California Department of Water Resources submitted for the record at the hearing of the United States Senate Select Committee on Indian Affairs on S. 1558, October 2, 1985.

increasingly protesting California water rights applications. In these basins, as well as the Carson and Walker River basins, the states wished to provide for satisfaction of existing water rights and to address new uses of water. The states determined that entering into interstate compact was the best way to resolve immediate problems and provide a basis for orderly resolution of future controversies. The governor of each state appointed commissions which met for 13 years to negotiate the Compact.

The Compact allocates sufficient water to each state to provide for decreed rights and existing beneficial uses, together with additional amounts deemed equitable within each of the basins. These waters are allocated to each state and not to individual users. Each state has jurisdiction to determine under its own laws the rights to beneficial use of water within limits set by the Compact.

In the Lake Tahoe Basin, where an average of about 140,000 acre-feet of water annually flows from the lake into Truckee River, 34,000 acre-feet per year is reserved for present and future use within the Basin; 23,000 acre-feet per year of this is allocated for use in California and 11,000 acre-feet per year is allocated to Nevada. This is in about the same ratio as the acreage of land within each state in the Basin. The compact limitations are based on all diversions from surface and ground waters.

In the Truckee River Basin below Lake Tahoe, where approximately 480,000 acre-feet annually flows from the upstream area in California including Lake Tahoe into Nevada, 10,000 acre-feet of water is allocated to California with the remainder allocated to Nevada. In addition, 6,000 acre-feet of conservation yield of the Bureau of Reclamation's Stampede Reservoir is allocated to California, upon execution of a contract with the United States.

In the Carson River Basin approximately 300,000 acre-feet of water annually now enters Nevada from California. The Compact reserves water to California for its existing beneficial uses, together with approximately 20 percent of the unused waters. The remainder is allocated for use in Nevada.

In the Walker River Basin, another 300,000 acre-feet of water per year on the average flows from the upstream watershed in California into Nevada. Of this amount, California will be permitted to use sufficient water for its established present needs plus about 35 percent of the unused flow. Nevada is allocated the remainder.

In addition to the allocation of quantities of water, the compact contains provisions which: (1) establish a permanent commission to administer the terms of the Compact: (2) recognize the use of water for the preservation, protection, and enhancement of fish, wildlife, and recreation: (3) permit the change of manner, purpose, or place of use of the allocated waters; and (4) cover all other factors deemed necessary to insure each state its equitable share of a common water supply.

III. ADMINISTRATION OF WATER RIGHTS IN THE LAKE TAHOE BASIN: AN EXAMPLE OF NEED FOR THE COMPACT

In the Lake Tahoe Basin, the surface and groundwater systems are interconnected and the Compact allocations include all diversions from all sources within the Basin. Under California law, the State Water Resources Control Board (State Water Board) has permit jurisdiction over surface appropriations. No State permit is required for extractions and use of ground water, riparian diversions, and certain surface appropriations initiated before 1914.

Following adoption of the Compact by the California Legislature in 1970, the State Water Board formulated a policy for administration of water rights in the Lake Tahoe Basin. The policy was adopted by the Board on March 16, 1972. The purpose of this policy, together with the State Board's ongoing analysis and policy evaluation is to assure that California will stay within the Compact's Lake Tahoe allocation.

The Policy limits issuance of new water rights permits so that their face value, together with all other uses of water, including ground water does not exceed 23,000 acre-feet per year. Permit applications in excess of this amount are not approved, but the applicant may maintain the priority of the application until such time as water may become available. The policy also places restrictions on the initial time to put water to beneficial use under a permit and the amount of extensions of this time that may be granted. Since 1972, with few exceptions, the State Board has not approved new permit applications in the Lake Tahoe Basin. The State Board has continued to collect information on existing and projected uses of water in the basin. Its staff is currently evaluating a revision to the 1972 policy.

Simply stated, the Board's Tahoe policy has implemented the Compact. This policy has always been considered a necessary interim arrangement. Ultimately, the State must act on the pending applications, but it must do so with the certainty of an equitable apportionment of those interstate waters. Although an equitable apportionment could be achieved ultimately through protracted and costly litigation, the Compact, as adopted by the Legislatures of both states, represents a more orderly and reasonable apportionment of these waters. As the demand for water increases, the need for certainty becomes more urgent; the consent of Congress is needed now.

IV. SPECIFIC RECOMMENDATIONS AND COMMENTS ON TITLE I OF S. 1558

As I noted in the introduction to this statement, California has several concerns with the present text of Title I of S. 1558. My staff has discussed our concerns informally with representatives of the state of Nevada and the Bureau of Reclamation in Sacramento. Some of our concerns can be addressed in legislative history; others would be more appropriately addressed by amendment to Title I of S. 1558. These amendments are attached to this statement. California's concerns which require amendments include the following:

1. California's allocation of yield from Stampede Reservoir

Article VI B 3 of the Compact allocates to California 6000 acre-feet per year from the conservation yield of Stampede Reservoir, subject to the execution of a contract with the United States. Section 105 of S. 1558 would mandate the Secretary of the Interior to enter into certain perpetual water supply contracts with the Carson-Truckee Water Conservancy District. In addition, it would authorize the storage of privately owned water in Stampede Reservoir. California's 6000 acre-feet allocation in Stampede Reservoir should also be recognized in Section 105. This concern would be addressed in Amendment No. 1 attached to this statement.

2. Impacts of Wather Modification on Local Snow Removal Services

Representatives of California counties in the Lake Tahoe and Truckee River basins have expressed the valid concern that weather modification programs authorized by Section 105(4)(5) could result in increased local costs for snow removal and maintenance of public works. We believe that this concern should be addressed in Title I. The United States should evaluate the impact of weather modification programs and it should be authorized to enter into agreements with local public agencies to reimburse them for any additional costs incurred as a result of weather modification. We believe that this concern must be addressed in an amendment, because it involves an authorization; it is addressed in Amendment No. 2.

3. Coordination of Reservoir Operation

Before the Truckee River Settlement and consent to the Compact can take effect, Section 107 requires that specified lawsuits be dismissed and certain agreements be adopted among Nevada parties. One of these agreements, Section 107(a)(11), would provide for utilization of available reservoir storage to best effectuate the United State's obligations. Most of the Truckee River storage is located in California, and we believe that the State of California should be a party to this agreement. This concern is addressed in Amendment No. 3.

In addition to requesting the above amendments, we have several additional concerns which can be addressed by the report on S. 1558 to be prepared by this committee.

1. Lake Tahoe Levels and USBR Operation Study

Several California government agencies, including the Department of Water Resources, the State Water Resources Control Board and the Lahontan Regional Water Quality Control Board have received complaints from local agencies and residents of the Lake Tahoe area about high levels in the lake. They allege that current operation of Lake Tahoe keeps it high, which results in wave wash erosion, turbidity and structural damage, and adverse impacts on recreation due to innundation of beaches.

As a part of the activities required by Title 1, the United States Bureau of Reclamation will conduct an operation study of the entire Truckee River system, including Lake Tahoe. It should include consideration of Lake Tahoe levels and their impacts. Including a reference to this in the committee report would be desirable.

2. Operating Criteria

Section 111(b)(2) requires that an agreement be reached on project operating criteria for the Newlands project, and Section 107(a)(10) makes this one of the conditions of consent to the Compact taking effect. We believe that California does not need to be a party to this agreement because it will largely involve matters within the Newlands project. However, to the extent that the agreement were to affect waters within California, we would appreciate the opportunity to review and comment on the agreement before it is adopted. An expression of Congress' intent that California be consulted on this agreement would be helpful.

3. NEPA Exemption

Section 113 provides that the actions authorized by Title 1 are exempt from the requirements of the National Environmental Policy Act (NEPA). We recognize that one of the primary purposes of the Truckee River Settlement is to preserve and enhance the Lahontan Cutthroat trout, a threatened species and the Cui-Ui, an endangered species. We also recognize that, if one or more formal environmental impact statements were required on actions to implement the Truckee River settlement, it would be difficult or impossible to meet the one-year deadline.

During a briefing for California state and local agencies on the Truckee River settlement, representatives of the U.S. Bureau of Reclamation stated that they would perform "NEPA quality studies" in carrying out the United States obligations under Title 1. Prior notice and consultation with State and local agencies, and other interested parties is an important part of any NEPA study. California agencies should be given the opportunity to comment on proposed actions, as they would have if those actions were subject to NEPA. The legislative history should make it clear that Congress intends that appropriate notice and consultation with State and local agencies be a part of actions authorized under Title 1, and that the concerns of these agencies be considered prior to carrying out an activity that may affect the environment or public services.

4. Recognition of California's Water Rights Administration

Sections 103(a)(3) and Section 105(j) of Title 1 refer specifically to the authority of the State Engineer of Nevada; in essence, they provide a specific recognition of State jurisdiction over water rights. California's water rights authority is also involved in the Truckee River System, and it should be recognized. This could be done by amending these sections to refer generally to the water rights administrators of the two states. In the alternative, the legislative history should make it clear that Section 103(a)(3) and Section 105(j) are intended to apply as well to California's water rights jurisdiction.

V. EFFECT OF COMPACT ON UNITED STATES

Article XXII(3) of the Compact conditions its becoming effective on Congress providing in its consent legislation that specified sections of the Compact shall be binding on the United States. As introduced, S. 1558 does not have this specific provision; it should be added to Title II to assure that the Compact becomes effective, as the bill intends.

STATE OF CALIFORNIA REQUESTED AMENDMENTS TO TITLE I OF S. 1558, AS INTRODUCED

AMENDMENT 1

Section 105(1.) is added to read:

(1.) In contracting for water supply from Stampede Reservoir under Subsections (b), through (e), and in allowing for storage of privately-owned water in Stampede Reservoir, under Subsection (g), the Secretary shall take into account the allocation to California of 6,000 acre-feet per year of conservation yield from Stampede Reservoir under Article VI.B.3 of the California-Nevada Interstate Compact. Nothing in this section shall be construed either as an impairment of the Secretary's authority to contract with California for such conservation yield, or as a diminution of California's right to contract for such yield.

AMENDMENT 2

Section 105(m) is added to read:

(m) The Secretary shall conduct an investigation to determine impacts of weather modification programs authorized pursuant to Section 105(a)(5) on snow removal programs of local governmental agencies. The Secretary shall enter into agreements with such agencies to reimburse them for any additional costs of snow removal or maintenance or replacement of public works incurred as a result of such weather modification programs, and such costs shall be payable from money appropriated from the settlement fund for weather modification programs, or other funds specifically appropriated for such reimbursement.

AMENDMENT 3

Section 107(a)(11) is amended to read:

(11) Sierra Pacific Power Company, Carson-Truckee Water Conservancy District, Washoe County Water Conservation District, the State of Nevada, Truckee-Carson Irrigation District, the Tribe, the State of California, and the Secretary have executed an agreement (and, if necessary, ratified such agreement by a court having competent jurisdiction) providing for utilization of available reservoir storage to best effectuate the Secretary's obligations under Section 106(a)(1) and under Sections 105(b),(c),(d), and (e); and

FALLON PAIUTE-SHOSHONE TRIBES

8955 Mission Road
P.O. Box 1650
Fallon, Nevada 89406
(702) 423-6075

1985 OCT -3 PM 3:10

October 1, 1985

The Honorable Mark Andrews
Chairman
Select Committee on Indian Affairs
838 Hart Building
Washington, D.C. 20510

REF: S. 1558

Dear Mr. Andrews:

We are quite concerned that the authors of this bill neglected to include the interests of the Fallon Paiute-Shoshone Tribes (FPST). The FPST is part of the Newlands project but not part of the Truckee-Carson Irrigation District (TCID). On page #22, lines 7 through 11, TCID is given the authority of operating and controlling the Newlands Project lands with the approval from the Secretary of the Interior. The bill needs to be reworded to state that the Newlands Project consist of two water users (TCID and the FPST), reflect our established water rights, and that they are protected from being tampered with without Government and Tribal approval.

I have enclosed information that gives a short history of the Fallon Paiute-Shoshone Tribes in reference to this matter. If you have any questions, please feel free to call.

Sincerely,

Dell Steve
Acting Chairman

Enclosures
cc: Senator Laxalt
Senator Hecht
Congresswoman Vucanovich
Congressman Reid

HISTORICAL AND BACKGROUND INFORMATION

The Fallon Paiute-Shoshone Reservation is in Churchill County, and consists of 840 acres of unallotted lands and 4,640 acres of allotted land, all within the Carson Division of the Newlands Project. There is a water right for 4,877.3 reservation acres.

Pursuant to the General Allotment Act of February 8, 1887 (24 Stat. 388), as amended February 28, 1891 (26 Stat. 794), fifty allotments of 160 acres each were made in 1890 and 146 allotments of the same acreage were make in 1893 and 1894. These allotments totaled about 31,000 acres and were located for the most part within what later became the Truckee-Carson Irrigation District, a part of the Newlands Project authorized by the Act of June 17, 1902 (32 Stat. 388).

On August 5, 1906, an agreement was make whereby the Indians could release their original 160 acre allotments of non-irrigable land and receive therefor 10 acre allotments of irrigable land with a paid up water right. Of the 196 original allotments of Public Domain land 189 allotments consented to have their 160 acre allotments cancelled and exchanged for 10 acres of irrigable land.

In accordance with Departmental Order dated April 20, 1907, 4,640 acres were set aside for such Indians as had relinquished there original allotments and such other Indians as might on investigation be found entitled to allotments.

Authority to make allotments was contained in the Act of April 30, 1908 (35 Stat. 85). On November 11, 1908, a water right certificate was issued for the full tract of 4,640 acres. This right was adjusted to 4,077 acres by letter of January 9, 1914.

An additional 840 acres was set aside by Departmental Order dated November 21, 1917. Later, on July 1, 1926, a water right for 823 acres was acquired. As it turned out, not all of the 10 acre tracts granted to the Indians were suitable for irrigation due to soils or topography. Consequently, they are unable to use all of the water rights they hold.

Therefore in 1965, a movement by the Fallon Tribe to acquire an additional 2,640 acres to be added on to the present reservation for the wrong that was done to the Tribe at the turn of the Century. The Tribe at that time gave up 31,000 acres in exchange for approximately 5,000 acres with paid up water rights and irrigable lands.

In the 95th Congress Senator Cannon and Laxalt co-sponsored Bill S-785 that became public law August 4, 1978. This law placed 2,700 plus acres in trust and to be deemed a part of the Fallon Indian Reservation and Colony.

BOARD OF COUNTY COMMISSIONERS - LYON COUNTY, NEVADA

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(702) 463-3341, EXT. 221
PRO[illegible] 575-2166
SILVER SPRINGS: [illegible]
DAYTON: 883-9774

October 14, 1985

Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
Suite SH-838
United States Senate
Washington, D.C. 20510

Dear Senator Andrews:

On Thursday, October 3, 1985, Mr. JohnD Winters, a rancher from Dayton, Nevada, appeared before the Lyon County Board of Commissioners. This same day, hearings were being held in Washington, D.C. on S.1558, the bill known as the "Pyramid Lake Paiute and Truckee River Settlement Act of 1985".

Mr. Winters presented the Board with a copy of a letter that he recently sent to you expressing his concerns with the language of S.1558. (A copy of his letter is enclosed.) The letter was reviewed and discussed at length, with all of the Board members being unanimously in agreement with the concerns addressed. This letter is being written to you to assure you that our board has the same concerns for the waters of the Truckee and Carson Rivers, as well as the other great river in our county, the Walker River that empties into Walker Lake near Hawthorne, Nevada. Nevada waters are a precious heritage that must be preserved for all Nevadans.

We are all in agreement that the concept of the bill is well founded and a settlement is definitely needed, but please address the waters of the Carson River in your settlement bill. The Carson River is a part of the 1956 Washoe Project, although that seems to have been forgotten during these past years.

Thank you for listening.

Sincerely,

LYON COUNTY BOARD OF COMMISSIONERS

Andrea Manor

Andrea M. Manor
Vice-Chairman

SEPTEMBER 27, 1985

HONORABLE MARK ANDREWS, CHAIRMAN
SELECT COMMITTEE ON INDIAN AFFAIRS
SUITE SH-838
UNITED STATES SENATE
WASHINGTON, D.C. 20510

DEAR MR. CHAIRMAN:

WE OF THE UPPER CARSON RIVER BASIN WHOLE HEARTILY AGREE WITH THE CONCEPT AND EFFORTS ON S. 1558 THE TRUCKEE RIVER SETTLEMENT BILL. A PEACEFUL AGREEMENT IS IN THE INTEREST OF ALL CONCERNED. HOWEVER, WE BELIEVE A VERY IMPORTANT SECTION OF NEVADA HAS BEEN POSSIBLY UNINTENTIONALLY OVERLOOKED, WHICH ARE THE FOUR UPSTREAM COUNTIES: STOREY, LYON, CARSON AND DOUGLAS, TRANSVERSED BY THE CARSON RIVER FOR AROUND 70 MILES, INHABITED BY RANCHERS AND SOME 70,000 PEOPLE. WE IN THIS AREA HAVE REAL CONCERN FOR THE CARSON RIVER BASIN ABOVE LAHONTAN RESERVOIR. NEVADA IS ALMOST TOTALLY DESERT WITH THE LOWEST PRECIPITATION OF ANY STATE IN THE UNION AND WE DEPEND ON OUR STREAM SYSTEMS FOR OUR VERY EXISTENCE.

THE UPPER CARSON RIVER BASIN RESIDENTS HAVE REAL CONCERN WITH S. 1558 FOR THE FOLLOWING REASONS:

SEC. 101 (8) (D) DOES NOT RECOGNIZE THE UPPER CARSON RIVER AREA OR COMMUNITIES.

SEC. 102 DEFINITIONS - DOES NOT DEFINE THE UPPER CARSON RIVER BASIN.

SEC. 102 (7) "ENHANCEMENT" ONLY REFERS TO FISH

SEC. 105 (5) AUGMENT RIVER FLOWS OF THE CARSON. SHOULD BE FOR ALL BENEFICIAL USES INCLUDING CARSON RIVER UPSTREAM.

SEC. 105 (a) (1) ALLOWS THE SECRETARY OF THE U.S. DEPARTMENT OF INTERIOR TO PURCHASE LANDS WITH WATER RIGHTS, AND TO TRANSFER, CHANCE MANNER AND PLACE OF USE. THIS IS NOT IN THE INTEREST OF THE UNITED STATES NOR THE STATE OF NEVADA. THESE LANDS AND WATER RIGHTS PRODUCE FOOD FOR THE NATION AND ARE VITAL FOR THE ECONOMY OF NEVADA. PRIVATE INDUSTRY CAN NOT COMPETE FOR THE PURCHASE OF THESE WATER RIGHTS WITH THE UNITED STATES SECRETARY OF INTERIOR.

IT IS APPARENT THE CARSON RIVER IS BEING MAXIMIZED, AT THE EXPENSE OF THE UPPER CARSON RIVER BASIN, FOR THE ENHANCEMENT OF THE FISH IN PYRAMID LAKE.

WITH GROWTH AND CHANGE IN THE UPPER CARSON RIVER BASIN THERE WILL BE AN INCREASING NEED AND RELIANCE ON THE CARSON RIVER FOR MUNICIPAL WATERS. WE FEEL THIS BILL, AS WRITTEN, WILL RESULT IN THE REMOVAL OF WATER RIGHTS TO THE LOWER BASIN ADVERSELY EFFECTING THE 70 MILES AND 70,000 PLUS PEOPLE IN THE UPSTREAM COUNTIES.

PYRAMID LAKE IS A VERY SMALL REMNANT OF THE ICE AGE INLAND SEA, WHICH HAS BEEN NATURALLY DRYING UP FOR THOUSANDS OF YEARS. THE SECRETARY IS NOT TAKING INTO CONSIDERATION THE BUREAU'S OWN REPORT THAT PYRAMID LAKE WOULD EVENTUALLY SHRINK TO AROUND 70,000 SURFACE ACRES BEFORE MORE OR LESS STABILIZING.

PYRAMID LAKE EVAPORATES EACH YEAR, ABOUT FOUR FEET OF WATER FOR EACH SURFACE ACRE PER YEAR AT ITS PRESENT LEVEL, WHICH AMOUNTS TO SOME 440,000 ACRE FEET. THAT IS MORE THAN THE TRUCKEE RIVER NORMALLY FLOWS IN ONE YEAR. IN THIS RESPECT, S. 1558 IS NOT PRAGMATIC AS PRACTICAL CONSEQUENCES ARE NOT CONSIDERED.

A PYRAMID LAKE ELEVATION SHOULD NOT BE SET BY MANY WHO CAN NOT CONTROL NATURE'S DRYING TREND AND EXPECT THE TAXPAYERS OF AMERICA TO PAY MILLIONS OF DOLLARS INDEFINITTELY EACH YEAR FOR EVENTS WE HAVE NO CONTROL OVER. WE DO BELIEVE PRAGMATIC CHANGES IN S. 1558 WOULD BE BENEFICIAL TO ALL CONCERNED.

RESPECTFULLY SUBMITTED,

John D. Winters
Nevada Rancher
Member, California-Nevada Interstate
Compact Commission

Chairman
Carson Walker Resource
Conservation and
Development Area

P.S. AFTER THE HUMAN SOCIETY HAS FINALLY BEEN ELIMINATED, WHO OR WHAT WILL GIVE A HOOT ABOUT THE FISH.

Senator Mark Andrews, Chairman
Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

October 9, 1985

Subject: Defeat of S.1558 & H.R. 3213

Dear Senator Andrews:

As a member of the Pyramid Lake Tribe, I am writing to urge your support in the defeat of S.1558 and H.R. 3213 "A bill to settle certain claims affecting the Pyramid Lake Paiute Indian Tribe of Nevada and for other purposes" now under consideration in both houses of Congress. Reasons for my objections follow:

1. I am not in favor of selling water in Stampede Reservoir for money. Our ancestors and families have fought all their lives, with blood in our homeland and with your laws in your courts to save our heritage and way of life at Pyramid Lake. Without fresh water, we as a Tribe will no longer exist. Our medicine (spiritual existence) comes from our trout and cui-ui fish which we will no longer be able to take into our bodies to sustain our own life. No money can buy life. We need the fresh water coming from Truckee River. No one asked us, the people, if we wanted to sell our fresh water or give it away.

2. Our neighbors upstream in the Truckee Meadows (Reno, Sparks & Washoe County) are only concerned with growth for big business and jobs for people moving to our area. They are not content to live within what water they are getting now. They have always been many in numbers and powerful with their money and politicians. Right now, they have little regard for Truckee River downstream users. They dump sewage and pollutants into the river when their sewage capacity overflows. The bill does not contain protections other citizens have under the National Environmental Policy Act. (See Sec. 113 (a))

3. The bill language takes away two important court cases before the Tribe enters negotiation. (See Sec.103 (a) (1) and Sec 105 (b)(c) & Sec 111(b)(1). With no responsible control at Derby Dam and with Stampede Reservoir water taken away for city and industrial uses, we have no "bargining chips". In addition, we presently are held in disfavor only by upstream users who want Stampede water. Later on, under the bill, if the Tribe does not reach agreement during negotiation (See Sec 107), the Tribe will be singled out as being uncooperative and unreasonable by others, such as State, Federal Government, and U.S. Congress. Everyone will then be against the Tribe and we will not have our bargining chips to fall back on. We must tell of these two cases won in court by the Tribe in years past:

Court Case #1. In 1985, the Supreme Court held that Stampede water is to be primarily used for the Pyramid Lake fishery and flood control, with smaller amounts of water for other purposes. No Stampede water is to be used for municipal and industrial uses but under the bill, it is (See Sec 105(b)(c)(d)(e)(g)).

The result of this case is this bill since upstream water users have no other remedy except through legislation.

Court Case #2. Decided in 1973, with later appeals by TCID failing to overturn it, the U.S. District Court held that:

(1) A set of operating criteria for Newlands Project must be developed by the Secretary of the Interior;

(2) Water used by TCID in the Newlands Project was limited to land having decreed water rights; and

(3) TCID was to improve its irrigation management to make more water available for Pyramid Lake.

Testimony in Case #2 found TCID to be historically using water based on its overestimating of acreage for irrigation, and, as a result TCID was cut in its annual water use from 406,000 acre feet to 288,100 acre feet. This led to more unallocated water (water without decreed water rights) going into Pyramid Lake. At that time, Pyramid Lake water elevation rose (See Bureau of Reclamation testimony before Congress, 10/85).

Also as a result of Case #2, the Secretary of Interior had to take the operation of government facilities (most importantly Derby Dam) away from TCID because of operational irregularities (See BIA comment on legislation attached to written testimony before Congress, 10/85). This bill provides a Congressional charter be given back to TCID (See Sec 111 (b)(I)). Giving TCID control of Derby Dam back to TCID is like "letting the coyote guard the chicken coop".

Finally as a result of Case #2, TCID and/or the Bureau of Reclamation has dragged its feet to live up to the law of the land from 1973 until 1983 wherein they must operate under the Secretary of Interior's court ordered operating criteria (See Bureau of Reclamation testimony before Congress, 10/85). It is not fair or responsible to condone TCID's unlawful acts by giving control of Derby Dam back to TCID (See Section 111 (b)(1)). It is also not fair or responsible to allow the Secretary of Interior to fail to carry out his trust responsibility to my Tribe.

4. The Bureau of Indian Affairs was not asked to be involved in the negotiations on the bill. Even though the BIA recognizes that a large measure of self-determination is current federal policy, they feel many items in the bill are detrimental to the Tribe (See BIA comments, as above). The Tribal Attorney, Mike Thorpe, has not looked after the best interest of the Tribe by not allowing BIA to carry out its trust responsibility to my Tribe.

5. Nothing in the bill assures a continued fishery once Pyramid Lake's fish are taken off the endangered species list. Although the bill purports to protect and provide for threatened or endangered fish species, delisting of these species is looked forward to by providing the Secretary of Interior authority for this eventual political decision (See Sec 105(e)). Also, under the bill, once Stampede is a little over 1/2 full(120,000 acre feet), no water releases is to be made for Pyramid Lake Fishery purposes (See Sec 105(d)(3)). Today, Stampede is close to 1/2 full, and this is considered to be a good water year. Most years, Stampede is less than 1/2 full because, not only must Stampede fulfill its flood control purpose, but because extra precipitation is simply not available.

6. Title 2 Ratification of the California-Nevada Interstate Water Compact. Title 1 conflicts with language in Title 2, as follows:

General: Water quality is not addressed in all four basins (Tahoe, Carson, Truckee, and Walker) and yet there are water quality problems in each basin. The Environmental Protection Act does not apply.

The Endangered Species Act is ignored.

Article 11 does not have a definition of beneficial use. This is important because in Article VI B. 4., neither fish flows nor lake stabilization are listed as beneficial use of water.

Article IV.D 6. includes power to dictate measuring devises on Indian land without consultation with the BIA and consideration of Tribal programs and plans for water use on Tribal lands.

Article IV D. II. gives the Compact Commission, a body having no federal or tribal voting member, broader subpoena power than U.S. District Court judges.

Article VI. The Tribe is not allowed (due to the court case of Nevada v. United States) from asserting claims against appropriated water right holders. To maintain the lake at levels stated in Title 1, the Tribe needs the unappropriated Truckee River water in California and Nevada. This article does not allow the Tribe to do this.

Article VI I, 3, & 4 allocates water to California for undefined purposes. Judge Ramirez has ruled from the bench in Pyramid Lake Paiute Tribe v. State of California (one of the Tribe's cases dismissed with prejudice under Title I Sec 107 (a)(4) of the bill) that the Tribe's claim to unappropriated water is unaffected by Nevada v. U.S.

Article VI B. 3. Allocation of 6,000 acre feet of water use granted to California from Stampede Reservoir. This grant ignores the 9th Circuit Court Decision in Carson Truckee Water Conservancy District v. Secretary of Interior and the Endangered Species Act.

Article VI. Does not mention Floriston rates. Presently, California is not bound by them and they are outdated. Floriston rate regime has a bearing on Pyramid Lake stabilisation and spring spawning flows, since water is released in the winter months for power generation from power plants that the Sierra Pacific Power Company operates.

Article VIII The term "unused water" is used. The term should be unappropriated water. The Tribe presently does not use its Dodge Flats 1859 decreed water rights for more than 2,000 acres of land on reservation benchlands.

Article XII. The Federal government presently owns and controls most of the storage and diversion facilities in the Compact area. The Compact Commission should not control the operation of Federal Reservoirs. This is especially so since failure to maintain the lake elevations under Title 1 of the bill calls for damages to be paid for by the Secretary of the Interior (BIA) out of its annual appropriations.

(See BIA comments on legislation as submitted in testimony by Alvin James before Congress on 10/85)

7. This poorly conceived and badly managed bill on the reservation by Tribal Attorney, Mike Thorpe does not properly address some of the real needs of the Pyramid Lake Paiutes, such as:

(a) Delivery of 1859 priority decreed water rights to Dodge flats for agricultural purposes on reservation bench lands;

(b) Improvements and betterments in the Pyramid Lake Irrigation District for the Wadsworth area including permanent concrete dam(s) and concrete canal ditching, and for areas in the northern Nixon area, under existing 1859 priority decreed water rights for bottomlands; and

(c) Stabilization (with rip-rap in critical areas and plantings in other areas) of river bank along the Lower Truckee within the reservation, thereby saving valuable farm bottomland and saving homesites.

(d) Funding for the bill is totally inadequate. Use of the 29 million will fall short of the 51 million needed (see testimony of Pyramid Lake Paiute Tribe before Congress, 10/85) as follows:

$13 million - Marble Bluff Dam (USF & WL & Bureau of Reclamation)
10 million - Lower Truckee Restoration (USF & WL)
16 million - Newlands T canal & Stillwater WL Mgt Area & Carson Pasture
12 million - purchase of other water rights
Total $51 million (See testimony of Pyramid Lake Tribe before Congress 10/85)

Note that funding in the bill falls $22 million short. No funds are provided for the operation and maintenance of Pyramid Lake Indian Tribal Enterprises (PLITE) currently funded at $950,000/yr. under BIA appropriations through the Washoe Project Act. (See PLITE 1986 Budget) No funds are available for 7(a)(b)and (c) above.

(e) Water for fish flows. The bill sets a minimum elevation for the lake that is completely unrealistic, If the Tribal goal to preserve FISH is a real goal. Studies show 3,807 feet lake elevation (Washoe Project Act calls for an elevation of 3,812 to 3,820 feet) is needed for fish to pass over the delta. The lake presently is 3,812 feet. The bill calls for 3,786 feet. A lake stabilization minimium elevation must be 3,807 (See Pyramid Lake Paiute Tribe and PLITE comments on Proposed OCAP for Newlands Project to Regional Director, Bureau of Reclamation)

Thank you for consideration of my comments on this proposed legislation.

Sincerely,

Josephine Wright
Tribal Member

cc: House of Representatives
Committee on Interior and Insular Affairs
Stewart Udall, Chairman
Washington, D.C. 20510

Edward Kennedy, Senator
United States Senate
Washington, D.C. 20510

LAW OFFICES OF

EISENHOWER, CARLSON, NEWLANDS, REHA, HENRIOT & QUINN

1201 PACIFIC AVE.
FIRST INTERSTATE PLAZA—SUITE 1200
TACOMA, WASHINGTON 98402
(206) 572-4500

C. JOHN NEWLANDS
JAMES F. HENRIOT
H. EUGENE QUINN
RONALD A. ROBERTS
S. ALAN WEAVER
RICHARD D. TURNER
RICHARD A. JESSUP
MICHAEL R. THORP

MACK D. LIEVENSE
JAMES M. HUSHAGEN
KATHRYN J. NELSON
DONALD L. ANDERSON
ROBERT G. CASEY
NANCY J. NORTON

JOHN J. REHA, JR.
MERTON ELLIOTT
OF COUNSEL

REUBEN C. CARLSON
OLIVER MALM
RETIRED

EDGAR H. EISENHOWER (1971)
CHARLES D. HUNTER, JR. (1980)
GUY T. ELLIOTT (1979)

1985 NOV -4 AM 10: 00

November 1, 1985

Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: S. 1558 and H.R. 3213

Dear Select Committee on Indian Affairs:

Enclosed you will find the Response of Pyramid Lake Paiute Tribe of Indians to Oral and Written Testimony on the Pyramid Lake Paiute and Truckee River Settlement Act of 1985.

We would appreciate it if you would include this document in the record of the hearings on S. 1558 and H.R. 3213.

Very truly yours,

Michael R Thorp

Michael R. Thorp
Tribal Attorney
Pyramid Lake Paiute Tribe

MRT:sjb/11831
Enclosures

cc: Mervin Wright, Tribal Chairman
Robert Pelcyger

RESPONSE OF PYRAMID LAKE PAIUTE TRIBE OF INDIANS TO ORAL AND WRITTEN TESTIMONY

ON

THE PYRAMID LAKE PAIUTE AND TRUCKEE
RIVER SETTLEMENT ACT OF 1985

H.R. 3213 (99TH CONG. 1ST SESS).

BEFORE THE HOUSE COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS

S. 1558 (99TH CONG. 1ST SESS.)

BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS AND THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

On Monday, October 28, 1985, the Pyramid Lake Paiute Tribal Council passed a resolution opposing the enactment of any settlement legislation including S. 1558 and H.R. 3213 and rescinding any prior resolutions inconsistent with that position. Unless changed by the Tribal Council or a vote of the tribal members through the Tribe's referendum process, that is the official position of the Pyramid Lake Tribe.

In order to insure that the record of the hearings on S. 1558 and H.R. 3213 are complete, the Tribe is providing the following response to oral and written testimony on the bills as presented before the House Interior and Insular Affairs Committee on October 3, 1985, the Senate Select Committee on Indian Affairs on October 2, 1985 and the Senate Committee on Energy and Natural Resources on October 21, 1985. Nothing in this response, however, should be taken as any form of approval or endorsement of the proposed legislation. This response is provided simply to clarify and correct certain erroneous statements which were made by others at the hearings.

Written Statement of Senator Mark Andrews.

Page 1. The second paragraph seems to indicate that the Walker River Basin is included in the settlement sought to be reached through S. 1558 and H.R. 3213. Although the Walker River Basin is affected by ratification of the California - Nevada Interstate Compact, it is not affected by Title I of the bills.

The cui-ui has been designated as an endangered species pursuant to the Endangered Species Act. The Lahontan cutthroat trout has been designated as a threatened species.

Written Statement of Senator Paul Laxalt.

Page 1. S. 1558 does not "require the completion of an operating agreement for Stampede Reservoir, so the implementation of the legislation is based on that contingency." Section 107(a)(6) requires an agreement providing for best utilization of available reservoir storage to carry out certain of the Secretary's obligations including obligations under §§105(b), (c), (d), and (g). Those subsections of §105 authorize but do not require the parties to enter into an agreement to provide municipal and industrial water for Reno and Sparks from Stampede Reservoir.

Written Statement of Congressman Harry Reid.

Page 4. The statement that S. 1558 and H.R. 3213 would grant Nevada and California the rights to surplus water is incorrect. Under this proposed legislation, California would receive the amount of Truckee River water allocated to it in the Interstate Compact or such lesser amount as California may agree to during the settlement negotiation process. The Pyramid Lake Tribe would receive the unappropriated or surplus water of the Truckee River in Nevada.

Oral Statement of Governor Richard Bryan.

During the oral testimony of Governor Bryan, the Governor was asked whether the addition of §204 to Title II of S. 1558 would require reauthorization of the Compact by the Nevada Legislature. The United States Supreme Court has stated that when Congress attaches conditions to the ratification of interstate compacts, the states who are parties to the compact can assume those conditions simply by accepting and acting under the compact. Petty v. Tennessee - Missouri Bridge Commission, 359 U.S. 275, 281 (1959). It would appear that no formal action by the states would be necessary.

During his testimony, Governor Bryan stated that in the state's view the issue of ownership of the bed of Pyramid Lake and the bed of the lower Truckee River on the Pyramid Lake Reservation is moot. The state's view is based upon the fact that the state filed suit against the federal government to quiet title to the bed of Pyramid Lake and of the lower Truckee River but the claim was rejected by the federal courts on the grounds of sovereign immunity of the United States and that the federal 12-year statute of limitations had run. If the issue is indeed moot then the State of Nevada should be willing to relinquish any remaining claim that it might have to the lake bed or river bed. In that way the state could greatly advance the prospects for settlement while at the same time giving up nothing.

Senator Gorton asked Governor Bryan whether the Truckee River water quality lawsuits would be settled if S. 1558 were enacted. The answer to that question is no. Two water quality lawsuits brought by the Pyramid Lake Tribe are currently pending. A third lawsuit resulted in a consent decree and the federal district court in Reno has continuing jurisdiction over that decree for compliance purposes. Due to the fact that the subject matter of those lawsuits is so different from the subject matter of the litigation sought to be ended through S. 1558, the necessity of adding other parties to the settlement negotiations, if water quality is included, and the potential involvement of other committees of the Congress, it was decided by the parties that the best course would be to exclude the water quality lawsuits from the current negotiations.

Written Statement of Robert N. Broadbent.

Page 2. The goal of the settlement legislation is not "ensuring the survival of the Lahontan cutthroat trout and the cui-ui." The goal of the legislation is to ensure the recovery of these fish species. That means bringing the species back to the point that they no longer would be classified as endangered or threatened species and would no longer need the protections of the Endangered Species Act.

Pages 11 and 12. At pages 11-12 of his testimony, Assistant Secretary Broadbent states that Pyramid Lake has stabilized under existing circumstances. That statement is misleading. It is true that the Lake remained relatively constant from 1966 through 1981 and has increased approximately 20 feet since 1981 to its current elevation of 3,811 feet. But that occurred during a relatively wet period. Based on the existing level of upstream diversions, the Tribe's hydrologist estimates that Pyramid Lake would decline an average of about one foot a year in the event of a repetition of the 43 year hydrologic cycle that occurred between 1925 and 1967. That is the crucial period so far as the Pyramid Lake fishery is concerned because the fish and the Lake must be able to survive and remain viable during sustained dry periods.

Written Testimony of Roland D. Westergard.

Page 2. The Pyramid Lake Tribe disagrees with the statement that the legislation "recognizes that it will be necessary to modify Carson-Truckee Water Conservancy District v. Clark, 741 F.2d 257 (9th Cir. 1984) to provide municipal and industrial water for the Reno-Sparks area." It is possible, through river operation and reservoir coordination agreements, to provide municipal and industrial water to Reno and Sparks through the use of sources other than Stampede Reservoir. No modification of the Stampede Reservoir decree would be necessary or agreed to by the Tribe.

Oral Testimony of Roland D. Westergard.

During Mr. Westergard's oral testimony, he stated that while the Pyramid Lake Tribe was not a party to the California-Nevada Interstate Compact negotiations, representatives of the Tribe were in frequent attendance. He also stated that the Tribe was repeatedly asked to participate in the negotiations but declined the opportunity. The Pyramid

Lake Tribe takes issue with those statements. Representatives of the Tribe were not in "frequent attendance" at the Compact negotiations. The Tribe was never asked to participate in the negotiations. *See* Attachment C to Prepared Statement of Michael R. Thorp.

The Tribe believes that Mr. Westergard has confused the negotiations over the Compact and the Pyramid Lake Task Force. Representatives of the Tribe did attend meetings of the Pyramid Lake Task Force and while the Tribe was asked to participate on the Task Force, the Tribe declined. It would appear that Mr. Westergard's remarks are more properly directed toward the Pyramid Lake Task Force than the Compact negotiations.

Oral Testimony of Joe L. Gremban.

During his oral testimony, Mr. Gremban referred to §105(a)(7) which would authorize the Secretary to offset power losses or reimburse persons or entities as necessary to compensate for power losses. The legislation should make it clear that such compensation is not paid out of the settlement fund. Any such compensation should be provided by the general Department of the Interior operating budget or special appropriation. This is also true of any payments made pursuant to §§105(i) and (j).

During his oral testimony, Mr. Gremban stated that the language "or such other amount as is agreed to by the Secretary, the Tribe, Sierra Pacific Power Company and the

Carson-Truckee Water Conservancy District" which is included following the figures provided in §§105(c) and (d) was included so that it would be possible for the parties to agree to water in addition to the amounts actually set forth in those sections. That is not correct. The purpose of the language was to leave completely open the question of how much water, if any, the Carson-Truckee Water Conservancy District will obtain from Stampede Reservoir. The bill does not guarantee any water from Stampede Reservoir for M & I use in Reno and Sparks. Instead the bill sets up a mechanism whereby the parties can negotiate a reservoir coordination program to meet everyone's needs. Obviously, in order to obtain the agreement of the Carson-Truckee Water Conservancy District and the Sierra Pacific Power Company, water must be provided for M & I use in Reno and Sparks. The bill does not require, however, that Stampede Reservoir be specifically used for that purpose. Therefore, §105 has been drafted to leave entirely open the question of how much water, if any, is devoted to M & I purposes at Stampede Reservoir.

Written Testimony of Robert Firth.

A history of the Washoe Project Act and the construction of Stampede Reservoir is contained in Carson-Truckee Water Conservancy District v. Secretary of the Interior, 537 F. Supp. 106 (D. Nev. 1982); 549 F. Supp. 704 (D. Nev. 1982); aff'd 741 F.2d 257 (9th Cir. 1984); cert denied, 53 U.S.L.W. 368 (March 26, 1985).

Mr. Firth is correct in his statement at page 10 that since its construction Stampede has not been used for M & I use. Instead, Stampede Reservoir has been used for flood control, recreation and fish and wildlife purposes. It is not correct to say that Stampede has been operated "to support fishery experiments only." Releases from Stampede Reservoir have been made as necessary to support spawning runs of cui-ui and Lahontan cutthroat trout in the lower Truckee River. These spawning runs, especially those of the cui-ui, have been critical in the effort to maintain the species.

Written Testimony of Jim King.

As set forth earlier, the proposed legislation does not mandate that the Cities of Reno and Sparks receive municipal and industrial water from Stampede Reservoir. How much municipal and industrial water is provided to the Cities and the source of that water will be the subject of negotiation between the parties.

Written Testimony of James Spoo and Dave Howard.

Page 3. §107 of the proposed legislation does not require the agreement of the Cities of Reno and Sparks to any of the actions which would result in the provisions of the legislation going into effect. Particularly, the bill does not require that the Cities agree to the reservoir coordination agreement.

In their statement, Mr. Spoo and Mr. Howard assert that if the Cities are prohibited from discharging effluent into the

Truckee River, the Truckee River could be deprived of up to 45,000 acre-feet per year of water. The Committee should be advised, however, that one of the alternatives to direct discharge of effluent into the Truckee River is piping that effluent to the Truckee Canal. If that were done, the effluent would no longer flow to Pyramid Lake and, instead, water normally diverted by the Truckee Canal to the Newlands Reclamation Project would be substituted for that effluent. The net result would be that Pyramid Lake would receive the same amount of water and the water would be of much better quality.

Written Testimony of Leslie B. Gray.

Page 4. In his statement Mr. Gray alleges that "capital improvements at Pyramid Lake have approximated $100 million ... ." That figure is incorrect. Capital expenditures for fishery purposes on the Pyramid Lake Reservation have included the construction of Marble Bluff Dam and Fishway and the three fish hatcheries currently run by the Pyramid Lake Tribe. These capital improvements have been substantially less than the $100 million figure mentioned by Mr. Gray.

Written Statement of the National Audubon Society.

Page 2. The dominant year class in the cui-ui population is currently the 1969 year class not the 1967.

The Pyramid Lake Tribe disagrees that the Lahontan cutthroat trout population can be secured only through hatchery efforts. The Pyramid Lake Tribe now has underway extensive efforts to reestablish Lahontan cutthroat trout spawning in the lower river. It will be a number of years before the Tribe will know whether or not those efforts have been successful but until we do know, it is much too early to abandon natural spawning of the trout.

Pages 6-7. Stillwater Wildlife Refuge and Carson Lake Pasture are currently maintained through excessive diversions of water from the Truckee River and illegal releases of water from Lahontan Reservoir. The Tribe strongly objects to any language in the settlement legislation which would recognize any "water rights" in the Stillwater Wildlife Refuge or Carson Lake Pasture. The Tribe has no objection to these areas continuing to receive tailwater from an efficiently run Newlands Reclamation Project. However, under no circumstances should water ever be diverted from the Truckee River or released from Lahontan Reservoir for these areas.

The Pyramid Lake Tribe has recently been informed that the staff of the Senate Select Committee on Indian Affairs and the House Committee on Interior and Insular Affairs are in the process of compiling a series of questions concerning the statements made at the hearings on S. 1558 and H.R. 3213 and the amendments which have been offered by the parties. The Pyramid Lake Tribe will therefore defer submitting comments on the proposed amendments at this time.

1985 OCT 15 PM 3:31

October 10, 1985

United States Senate
ATTEN: Pete Taylor
Select Committee on Indian Affairs
Washington, D.C., 20510

Dear Mr. Taylor:

Thank you very much for returning my telephone call of October 8th. I appreciate your responsive assistance in regards to S.1558, "Pyramid Lake Paiute and Truckee River Settlement Act of 1985".

Enclosed for the Committee's and your information, is a recent news article regarding the Pyramid Lake Tribal referendum. Though they misstated Chairman Wilfred Shaw's name, it is an accurate report. As we discussed on the telephone, it is necessary to allow sufficient time for Tribal members to comprehend the Settlement Bill. Though the Tribal Chairman's projection of two to three months seems excessive to me. I can only hope that the Committee will not act on the Bill until the referendum is held. As Tribal members, we have no control on setting the date of the referendum election. My concern is that the Tribal members will have a voice on legislation that directly effects them.

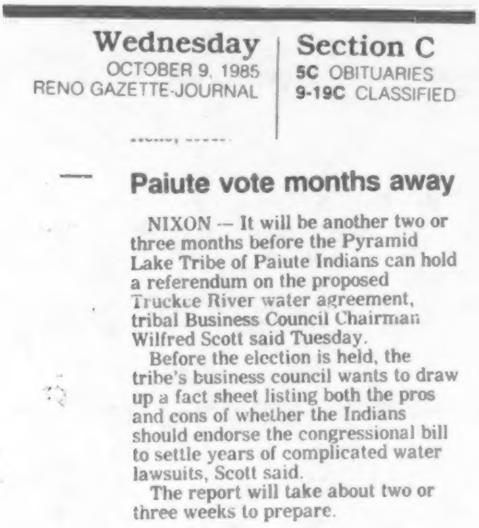
Thank you again for sharing your insights and time with me on this matter.

Sincerely,

Tina Tissychy
Post Office Box 359
Wadsworth, Nevada 89442

Enclosure

Enclosure to October 10, 1985 letter to the Select Committee on Indian Affairs



Wednesday
OCTOBER 9, 1985
RENO GAZETTE-JOURNAL

Section C
5C OBITUARIES
9-19C CLASSIFIED

Paiute vote months away

NIXON — It will be another two or three months before the Pyramid Lake Tribe of Paiute Indians can hold a referendum on the proposed Truckee River water agreement, tribal Business Council Chairman Wilfred Scott said Tuesday.

Before the election is held, the tribe's business council wants to draw up a fact sheet listing both the pros and cons of whether the Indians should endorse the congressional bill to settle years of complicated water lawsuits, Scott said.

The report will take about two or three weeks to prepare.

UNITED STATES WATER COMMISSIONERS
P.O. BOX J
YERINGTON, NEVADA 89447

09 OCTOBER 1985

1985 OCT 13 AM 10 11

THE HONORABLE MARK ANDREWS
CHAIRMAN
SELECT COMMITTEE ON INDIAN AFFAIRS
838 HART BUILDING
WASHINGTON, D.C. 20510

THE HONORABLE MORRIS K. UDALL
CHAIRMAN
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
1324 LONGWORTH BUILDING
WASHINGTON, D.C. 20515

RE: SENATE BILL S.1558 AND HOUSE BILL H.3213
TRUCKEE RIVER SETTLEMENT ACT OF 1985

GENTLEMEN:

PLEASE INCLUDE THE FOLLOWING STATEMENTS INTO THE RECORD OF THE HEARINGS HELD BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS ON THE ABOVE MENTIONED BILLS.

I AM THE WATER MASTER FOR THE WALKER RIVER SYSTEM AND FIND IT PRUDENT THAT I CORRECT SOME OF THE ERRONEOUS REPRESENTATIONS PRESENTED IN THE ORAL TESTIMONY RELATED TO THE FOLLOWING SUBJECTS.

WALKER RIVER PAIUTE TRIBE INVOLVEMENT

TESTIMONY HAS SHOWN THAT THE TRIBE DID HAVE A DIRECT INVOLVEMENT DEFINING THE AMOUNT OF WATER ALLOWED THE TRIBE IN THE COMPACT. THEY, NOW, DO NOT ENDORSE THE COMPACT AND ASK FOR ENOUGH WATER TO IRRIGATE 10,000 ACRES OF RESTORED LANDS THAT WERE SET ASIDE FOR GRAZING. BE COMPLETELY COGNIZANT OF THE FACT THAT THE COMPACT DOES NOT PRECLUDE THE TRIBE FROM OBTAINING A WATER RIGHT FOR THESE LANDS THROUGH A RESERVED DOCTRINE CLAIM BEFORE THE COURTS. SECONDLY, AT NO POINT IN TIME HAS THE TRIBE FILED AN APPLICATION WITH THE STATE OF NEVADA FOR WATER FOR THESE LANDS, EVEN DURING THE COURSE OF LITIGATION BETWEEN 1936 AND 1940.

STATE ISSUED CERTIFICATES OF DIRECT DIVERSION WATER

AS WATER MASTER I OPERATE THE WALKER RIVER AS IF THE COMPACT HAS ALREADY BEEN RATIFIED BY CONGRESS, SINCE IT HAS BEEN ADOPTED THE TWO STATES, CALIFORNIA AND NEVADA. THE FEDERAL OPERATING DECREE, C-125 ALLOWS THE WATER MASTER IF AT ANY TIME HE DETERMINES THAT THERE IS MORE WATER AVAILABLE IN THE STREAM THAN

IS REQUIRED TO FILL THE RIGHTS OF ALL OF THE VESTED USERS INCLUDING THE RIGHTS OF THE WALKER RIVER IRRIGATION DISTRICT AND OTHERS SIMILARLY SITUATED TO STORE WATER, THEN HE SHALL PRORATE SUCH EXCESS WATER TO ALL USERS IN PROPORTION TO THE RIGHTS ALREADY ESTABLISHED. THE COMPACT FORMALIZES THIS JUDGEMENT PROCESS ALLOWED BY THE DECREE AND DIVIDES THE WATERS OF THE WALKER RIVER IN EXCESS OF THE DECREE BETWEEN THE TWO STATES. THEREFORE AFTER RATIFICATION OF THE COMPACT IT ALLOWS EACH STATE TO DETERMINE PURSUANT TO ITS OWN LAWS, THE RIGHTS TO THE USE OF WATERS ALLOCATED TO IT BY THE COMPACT. FOR EXAMPLE WALKER LAKE WAS ISSUED A CERTIFICATE FOR SOME OF THE EXCESS WATER WHICH BECOMES PART OF NEVADA'S SHARE FROM THE COMPACT. THE TRIBE, ALONG WITH OTHERS, WOULD HAVE THIS SAME OPPORTUNITY TO APPLY FOR ADDITIONAL WATER FROM THE STATE OF NEVADA.

AVAILABILITY OF COMPACT WATER

THE QUANTITY AND THE TIME OF YEAR IN WHICH THE COMPACT WATER IS AVAILABLE AND FLOWS IN EXCESS OF THE DECREE MUST BE MADE PERFECTLY CLEAR TO MEMBERS ON THE TWO COMMITTEES. AS WATER MASTER I HAVE A HANDS ON FEEL FOR THE FLOW CONDITIONS ON THE WALKER RIVER. IN A NORMAL WATER YEAR THIS WATER WILL FLOW FOR PERIOD OF 17 TO 20 DAYS ON THE AVERAGE. THE AMOUNT OF WATER VARIES FROM AN EXTREME OF 3 TO 5 THOUSAND CUBIC FEET PER SECOND TO AN AMOUNT JUST SLIGHTLY ABOVE THE DECREE, AVERAGING 12 TO 16 THOUSAND ACRE FEET ON AN ANNUAL BASIS.

THE WALKER RIVER IS OVER ALLOCATED IN THE SENSE THAT THERE IS NOT A DEPENDABLE REMAINING SUPPLY OF SURFACE WATER THAT WILL RUN LONG ENOUGH THAT WILL BE AVAILABLE FOR CROP PRODUCTION. THE ONLY MANNER IN WHICH THE WATER SUPPLY CAN BE MADE AVAILABLE FOR ANY LENGTH OF TIME IS THROUGH THE DEVELOPMENT OF STORAGE, SOMETHING THE WALKER RIVER IRRIGATION DISTRICT HAS BEEN TRYING TO DO FOR MANY YEARS. TO MAKE MATTERS WORSE THE COMPACT WATER IS ONLY AVAILABLE FOR SIX (6) YEARS OUT OF TEN(10). THE ONLY REMAINING RELIABLE SOURCE OF WATER ON THE WALKER RIVER IS UNDERGROUND WATER AND IN SOME BASINS THE STATE ENGINEER HAS CLOSED THEM FROM FUTURE APPROPRIATION BECAUSE OF THE LIMITED SUPPLY.

IRRIGATED ACREAGE WITHIN THE WALKER RIVER PAIUTE TRIBE RESERVATION

THE APPARENT PRESENT IRRIGATED ACREAGE ON THE RESERVATION IS 2,720 ACRES AND NOT THE 5,000 ACRES PRESENTED IN THE TESTIMONY. PLEASE FIND ENCLOSED AN ACREAGE SUMMARY SUPPLIED BY THE AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE, YERINGTON, NEVADA.

PRIORITY DATE OF DIVERSION

AS WATER MASTER I ADMINISTER THE RIVER ON THE BASIS OF PRIORITY DATES OF DIVERSIONS. THE WESTERN WATER DOCTRINE OF PRIOR APPROPRIATIONS GOVERNS THE RIGHT TO THE USE OF WATER, REGARDLESS OF THE ORIGIN OF THE ALLOCATION--THE FEDERAL COURTS OR FROM THE STATE WATER RESOURCE DEPARTMENTS. THE PRIORITY DATE OF 1936 AS AGREED UPON BY THE COMPACT FOR WEBER RESERVOIR AND THE ADDITIONAL 9,450 ACRE FEET OF DIRECT DIVERSION WATER FOR THE TRIBE IS SENIOR TO THE CERTIFICATES ISSUED BY THE NEVADA STATE ENGINEER TO WALKER RIVER IRRIGATION DISTRICT ON THE EAST AND MAIN BRANCHES OF THE SYSTEM; SENIOR ALSO TO ANY FUTURE WATER STORAGE FACILITIES; SENIOR TO THE NEWLY AWARDED WALKER LAKE CERTIFICATE ISSUED IN THE NAME OF THE NEVADA FISH AND GAME DEPARTMENT.

WATER DIVERTED FROM THE WALKER RIVER TO RESERVATION LANDS

ACTUAL DIVERSION RECORDS ARE NOT KEPT BY THE WATER MASTER'S OFFICE DIRECTLY FROM THE RIVER INTO THE VARIOUS WATERCOURSES ON THE RESERVATION. THE U.S. GEOLOGICAL MEASUREMENT STATION LOCATED JUST UPSTREAM OF THE RESERVATION BOUNDARY IS THE RECOGNIZED POINT OF DIVERSION FOR THE RIGHTS THAT ARE ALLOCATED TO THE TRIBE. THE TRIBES REFUSAL TO ALLOW ANY DEFENITIVE MEASURING GAGES TO BE INSTALLED ON THE RESERVATION CREATES WATER MANAGEMENT DIFFICULTIES AS TO HOW MUCH WATER IS BEING DIVERTED ONTO THE LANDS OF THE RESERVATION AND, AS WELL, DOES NOT ALLOW FOR ANY DEPLETION ANALYSIS INTO WALKER LAKE.

THE PRESENT USE OF SURFACE WATER FOR IRRIGATION ON THE RESERVATION ACCOUNTS FOR ONLY 28 PERCENT OF THE STREAMFLOW OF WATER ENTERING THE RESERVATION IN AN AVERAGE YEAR.[21] THUS IT CAN BE ESTIMATED THAT THE RESERVATION IS DIVERTING SOME 35,000 ACRE FEET OF WATER FROM THE RIVER ON A NORMAL YEAR.

THANK YOU FOR MAKING THESE ADDITIONAL COMMENTS PART OF THE OFFICIAL RECORD.

SINCERELY,

Jim Weishaupt

JIM WEISHAUPT
P.O. BOX 820
YERINGTON, NEVADA
89447

WASHOE COUNTY ADVISORY BOARD
TO MANAGE WILDLIFE

13035 Thomas Creek Road
Reno, Nevada 89511

1985 OCT 28 AM 10 56

21 October 1985

Senator Mark Andrews, Chairman
Select Committee on Indian Affairs
Senate Heart Office Building
Room SH838
Washington, D.C. 20510

Dear Senator Andrews:

The Washoe County Advisory Board to Manage Wildlife, at its regularly scheduled public meeting of 17 October 1985, unanimously voted to request consideration regarding the Pyramid Lake Settlement Act, S.1558 and H.R.3213.

While we feel the Act is a very commendable effort, given the many years of conflict over the Truckee River water situation, we feel the needs of the wildlife and ecosystem of the Lahontan Valley have been neglected which will be to the detriment, not only to that ecosystem and wildlife, but also to the citizenry of the State of Nevada.

As you are aware, the Lahontan Valley wetland habitat supports a large percent of the waterfowl population of the pacific flyway and provides a very valuable fishery resource, not only for the citizens of the state but for the other avions and mammals which inhabit the Lahontan Valley wetlands. [redacted]

Sincerely,

Stephen J. Tapogna, Chairman
Washoe County Advisory Board
to Manage Wildlife

SJT:lew

cc: Senator Paul Laxalt

Tina Nappe, Nevada Wildlife Federation

W. Molini, Director
Nevada Department of Wildlife